

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 112.



**THE BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS, ET AL,
APPELLANTS,**

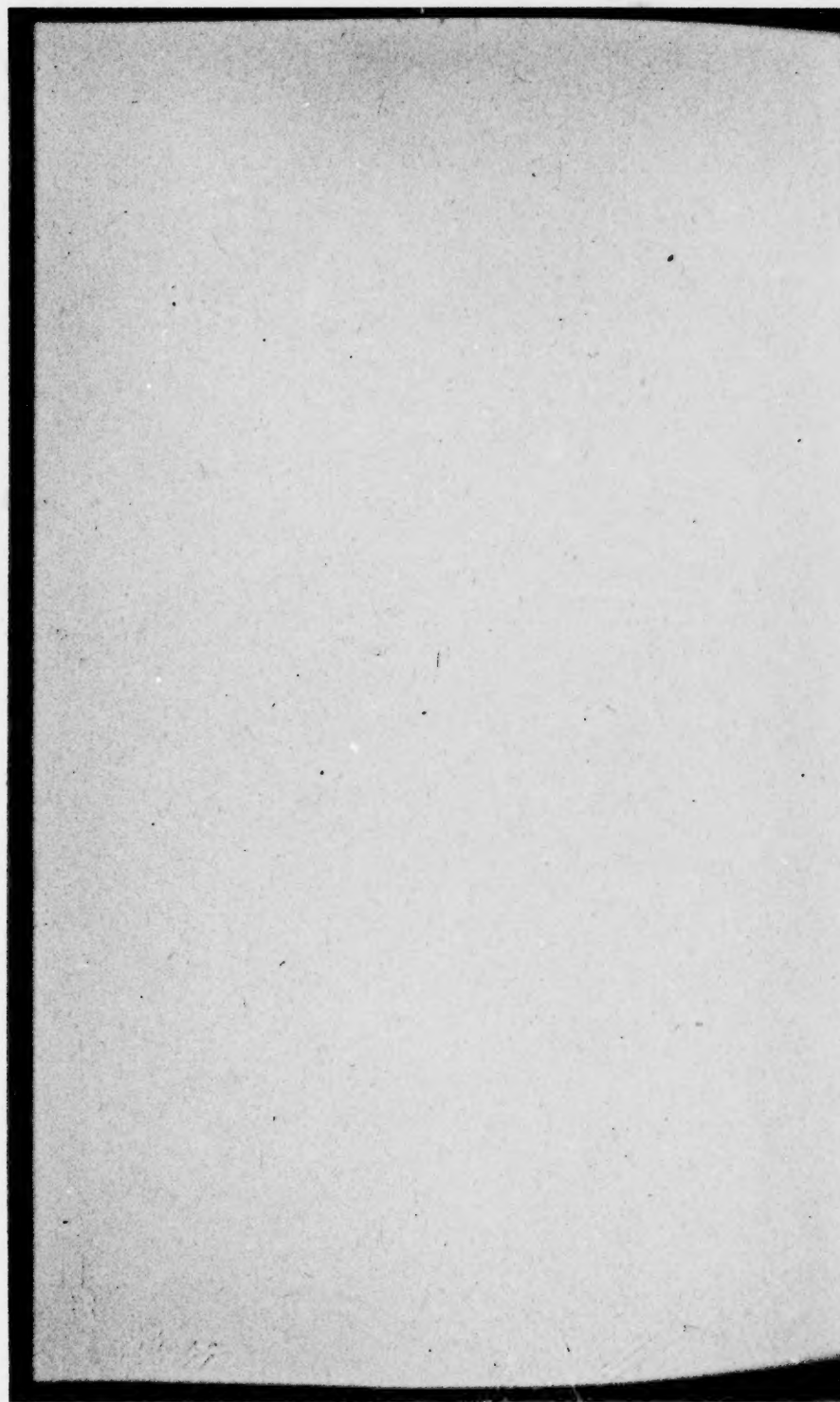
vs.

THE NEW YORK LIFE INSURANCE COMPANY.

**APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.**

FILED APRIL 2, 1908.

(21,089.)



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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

No. 13428.

THE NEW YORK LIFE INSURANCE COMPANY, Appellee,
versus

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS; JOHN FITZPATRICK, State Tax Collector of the City of New Orleans, and OTTO F. BRIEDE, Treasurer of the City of New Orleans, Appellants.

James H. McIntosh, Esquire, Rice & Montgomery, Esquires, and Farrar, Jonas & Kruttschnitt, Esquires, for the New York Life Insurance Company, Appellee.

George H. Terriberry, Esquire, for the Board of Assessors, Parish of Orleans.

Samuel L. Gilmore, Esquire, City Attorney, and

H. G. Dupre, Esquire, Assistant City Attorney, for the City of New Orleans:

F. C. Zacharie, Esquire, for John Fitzpatrick, State Tax Collector, First District, City of New Orleans, Appellants.

Appeal from the Honorable the Circuit Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Honorable Supreme Court of the United States, returnable within Thirty (30) days from the Second (2nd) day of March, A. D. 1908, at the City of Washington, District of Columbia.

TRANSCRIPT OF APPEAL.

1 *Bill of Complaint.*

Filed October 27, 1906.

In the Circuit Court of the United States for the Eastern District of Louisiana, at New Orleans. In Equity.

NEW YORK LIFE INSURANCE COMPANY, Complainant,
vs.

BOARD OF ASSESSORS OF THE PARISH OF ORLEANS; JOHN FITZPATRICK, as State Tax Collector, and OTTO F. BRIEDE, as Treasurer of the City of New Orleans, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

New York Life Insurance Company, a corporation duly organized and existing under and by virtue of the Laws of the State of

New York, and a citizen of said State and a resident and inhabitant of the City of New York, in said State of New York and of the Southern District thereof, and a non-resident of the State of Louisiana and of the Eastern District thereof, brings this its bill against the Board of Assessors of the Parish of Orleans, a corporation organized and existing under and by virtue of the Laws of the State of Louisiana, and a citizen, resident and inhabitant of said State of Louisiana and of the Eastern District thereof and a non-resident of said State of New York and of the Southern District thereof, and against John Fitzpatrick as State Tax Collector of the First District of the City of New Orleans, and Otto F. Briede

2 as Treasurer of the City of New Orleans, each citizens, residents and inhabitants of the State of Louisiana and of the Eastern District thereof and non-residents of the State of New York and of the Southern District thereof, for that this is a cause in equity arising under the Constitution of the United States and especially under that part of the Fourteenth Amendment thereto which provides that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law," and thereupon.

Your orator complains and says,—

First. Your orator now is and during all the times herein mentioned has been a corporation duly organized and existing under and by virtue of the Laws of the State of New York as a life insurance company for the purpose of transacting the business of insurance on lives and all and every insurance pertaining to life, and receiving and executing trusts and making endowments, and granting, purchasing and disposing of annuities, located, domiciled and having its principal offices, domiciled and place of business in the City of New York, in the State of New York. The defendant the Board of Assessors of the Parish of Orleans is a Board composed of seven citizens of the State of Louisiana and residents of the Parish of Orleans, charged with the duty of exercising

3 their functions jointly in the listing and assessing of property in and for the Parish of Orleans for purposes of taxation. The defendant John Fitzpatrick is the State Tax Collector for the First District of New Orleans, and the defendant Otto F. Briede is the Treasurer of the City of New Orleans.

Second. Your orator has not now, nor for more than ten years last past has it ever had in the State of Louisiana an office or place of business for any purpose except an office located in the City of New Orleans in charge of a special agent called a Cashier, and another like office located in the City of Shreveport in charge of a special agent called a Cashier, which said several offices are, and for more than ten years last past have been used by your orator solely as a convenience to your orator and to its policy-holders within said State in communicating with your orator in respect to obtaining new insurance and in collecting renewal premiums on existing in-

insurance. Said new and renewal business in that part of said State lying south of the thirty-first degree of north latitude has been during said time, and still is, reported to your orator at its Home Office, through said New Orleans office, and said new and renewal business for the remainder of said State has been, and still is, reported to your orator at its said Home Office through said Shreveport office. For convenience said offices are called Branch Offices,

but their functions are limited as aforesaid. No money has ever been loaned on interest, nor credits created, nor bills receivable for money loaned or advanced for goods sold has ever been taken by your orator in or through said offices or ever kept or deposited there.

Third. Your orator has not now, nor for more than ten years last past has it ever had within the State of Louisiana, any officer, agent or representative except special agents with limited powers and authority, as follows, to-wit:

1. Special soliciting agents employed by your orator with authority limited to soliciting in writing applications for insurance on the lives of individuals, said applications to be taken upon forms furnished by your orator for that purpose; to introducing such applicants to physicians authorized by your orator to make medical examinations; to collecting the first premium on policies issued on applications taken by them, respectively, and to delivering such policies, and to collecting renewal premiums whenever, and only whenever, your orator furnishes them with your orator's official renewal receipt for that purpose.

2. Medical examiners appointed by your orator solely for the purpose of making medical examinations of applicants for insurance and reporting the same in writing to your orator on your orator's official form.

3. Agency Directors employed by your orator with authority limited to negotiating for the employment of new soliciting agents, instructing such soliciting agents in the business of their employment, and generally supervising said work of the soliciting agents.

4. An Inspector of Agencies employed by your orator with authority limited to the general supervision of said work of the Agency Directors and managing the general details connected with obtaining new insurance on the lives of individuals and not otherwise.

5. A Cashier in each of said Branch Offices employed by your orator with authority limited to making and supervising the making of such records as the business of said Branch Offices require, to mailing to the persons residing within the said jurisdiction of their several offices, such premium notices as your orator makes out at its Home Office and sends to them for that purpose, to receiving from soliciting agents and from medical examiners within said territory tributary to their respective offices applications for new insurance and medical examinations for transmission to your orator at its Home Office, to receiving from your orator's Home Office

6 report of your orator's action on such applications, and receiving from your orator and transmitting to the soliciting agents new policies of insurance, to receiving such first premiums as are paid on such new policies as are written and placed within said territory tributary to their respective offices, and to receiving renewal premiums from policy-holders within said territory whenever they are specially authorized by your orator so to do, all of which said premiums it is the duty of the Cashier at once to deposit to the credit of your orator in the local bank at which it does business, as hereinafter more fully stated; to keeping account of the insurance obtained by the several soliciting agents reporting their business through his office, and paying such soliciting agents their commissions earned in obtaining new insurance, and to such other acts and transactions as are incident to obtaining new insurance and collecting renewal premiums on old insurance. Said Cashiers have no power or authority, nor have they nor has any other person for your orator within said State of Louisiana, any power or authority, nor have they or any one of them ever had any power or authority, to loan money for your orator on interest to create credits or to take bills receivable for money loaned or to receive money advanced for goods sold; that no one of said agents or any other person within the State of Louisiana now has or ever has had any power or authority on behalf of your orator to make, alter or discharge any contract or to invest the funds, or any part thereof, of your orator, or otherwise, or to represent your orator, in any capacity except as hereinbefore stated, and except such acts and transactions as are incident to the powers of said several agents herein described.

7 *Fourth.* That your orator now is, and for many years last past has been, from and at its said Home Office in the City of New York, engaged in making contracts of insurance on the lives of persons generally throughout the world, including the State of Louisiana, having during all of said time duly complied with the laws of the State of Louisiana authorizing it to make contracts of insurance on the lives of residents of said State, and has during all of said time been duly admitted by the proper authorities of said State to transact said business within said State. Before the first day of March, in the year 1906, and on, to wit, the 30th day of January, 1906, your orator rendered to the Secretary of said State of Louisiana, a report signed and sworn to by its President and Secretary of its condition upon the preceding 31st day of December, which said report included a detailed statement of its assets and liabilities on that day, the amount and character of the business transacted in said State, money received and expended during the year, and each and every other item of information and in the form required by said Secretary of State.

Fifth. On, to-wit: the 25th day of January 1906, and within twenty days after the list for making return of your orator's property for taxation had been left at your orator's place of business in the Parish of Orleans, your orator made due sworn return of its property, therein and thereby returning as Money in Possession, on

Deposit or in Hand of the amount and value of \$1,000, and Office property of the amount and value of \$500, which said return fully and correctly stated all and singular the property of your orator situated within said Parish of Orleans or taxable therein and the actual cash value thereof on the date of said return and its actual cash value, to-wit: the first day of January 1905, to the present time, said several items representing in their aggregate a fair average on the capital, both cash and credit, employed in the business of your orator within said Parish of Orleans and the territory tributary to your orator's said New Orleans Office. Your orator did not then, nor at any time for more than one year theretofore, nor at any time since, have any other rights, credits, bonds, or securities of any kind, promissory notes, open accounts or other obligations, or money loaned at interest or any movable or immovable, corporeal or incorporeal articles or things of value owned or held or controlled within said State of Louisiana by your orator in any capacity whatsoever, except your orator's money in possession, on deposit or in hand at Shreveport and its office property there.

Sixth. Nevertheless said Board of Assessors, disregarding your orator's said sworn return, arbitrarily placed your orator on said assessment roll as owner and possessed and taxable within said Parish of Orleans, of and for money loaned on interest, all credits and all bills receivable for money loaned or advanced for goods sold of the amount and value of \$568,900, and as owner and possessed of and taxable within said Parish of Orleans upon money in possession, on deposit or in hand of the amount and value of \$51,700 instead of \$1,000 as returned by your orator, and there and then assessed your orator and placed your orator on said assessment list as taxable for state, levee district and municipal purposes upon said several items of property valued as aforesaid, making your orator's total assessment for said Parish of Orleans by adding to said two items of valuation that item amounting to \$500 returned by your orator as office property the sum of \$621,100 in lieu and instead of said valuation of \$1,500 as returned by your orator.

Seventh. Thereafter, and on, to-wit, the 27th day of March, 1906, and during the period when said lists were open for public inspection and correction, your orator made written complaint to said Board of Assessors, therein and thereby advising said Board of said return made by your orator and protesting and objecting to said several items of said listing and assessment except as returned as aforesaid by your orator and praying for the correction of said listing and assessment by eliminating therefrom that item arbitrarily placed thereon as aforesaid by said Board consisting of money loaned on interest, all credits, bills receivable for money loaned and advanced for goods sold, and by reducing said item of money in possession, on deposit or in hand from \$51,700 as placed on said assessment roll by said Board to the sum of \$1,000 as returned by your orator, and praying for the correction of said assessment roll and the elimination and reduction of said several items as aforesaid and for the restoration of your orator's said listing and assessment to said two items of the aggregate value of \$1,500 as returned by your orator.

Thereafter, and on, to-wit, the 31st day of March, 1906, during the period when said lists were open for public inspection and
10 correction, your orator made further additional and supplemental written complaint to said Board of Assessors further protesting and objecting to said listing and assessment for that your orator was not subject to assessment for taxation for money loaned on interest, or credits created, bills receivable for money loaned or advanced for goods sold, for that your orator owned property of no such kind within said State, but that in no event should your orator be taxed on said item for money loaned on interest, all credits, bills receivable for money loaned and advanced for goods sold on a valuation in excess of \$20,000, and prayed for a reduction of said item to said sum of \$20,000, but nevertheless said Board of Assessors wholly disregarding said written complaint and said supplemental written complaint and the respective prayers thereof, overruled the same and affirmed its said listing and valuation and assessment as aforesaid, and thereafter duly laid before the Committee on assessment of the City Council of the City of New Orleans said list of property as so made up, extended, listed and advanced by said Board of Assessors as aforesaid.

Eighth. The City Council of the City of New Orleans duly delegated to a committee known as the "Budget and Assessment Committee of the City Council of New Orleans" power and authority to do and perform the duties incumbent upon the City Council of New Orleans as a Board of Reviewers for the Parish and City of New Orleans. On, to-wit, the 6th day of April, 1906, your orator made written complaint to said Budget and Assessment Committee of the City Council of New Orleans, therein and thereby directing the
11 attention of said Committee to your orator's return and the disregard thereof by said Board of Assessors and their said arbitrary listing and valuing and to your orator's said written complaint and application to said Board for correction of said list and valuation and praying said Committee to review and correct said list and valuation by cancelling said item of Money Loaned on Interest, all Credits, and all Bills receivable for Money Loaned or Advanced for Goods Sold, or in the alternative, by reducing the valuation of said item from \$568,900 to \$20,000, and by reducing the valuation of said item of Money in Possession, on Deposit or in Hand, from the sum of \$51,700 to \$1,000 as shown by your orator's said return; but said Committee, on, to-wit, the 9th day of April, 1906, denied the prayer of your orator's said written complaint, and there and then refused to give your orator any relief whatsoever, and there and then approved said listing, valuation and assessment as a whole and in every item and particular thereof and so reported their said action thereon to the City Council for its approval or rejection which said City Council approved the same and so duly reported back to said Board of Assessors who thereupon duly furnished to the several officers within the time required by law the said assessment roll containing said list, valuation and assessment against your orator, which said roll so made up serves as a basis for all State, and City taxes for the year 1906, and thereupon there was

levied against your orator a tax of six *mils* on the dollar of said valuation and assessment for State purposes, said tax for said State purposes amounting to \$3,726.60, and the said The City of New

12 Orleans levied a tax against your orator for the year 1906, of twenty-two *mils* on the dollar upon said valuation and assessment, said tax so levied by The City of New Orleans amounting to the sum of \$13,653.22; that the State tax justly and legally due from your orator on the true listing, valuation and assessment of your orator's said property is the sum of Nine Dollars, which said sum your orator duly tendered to the defendant John Fitzpatrick as State Tax Collector in full of all taxes legally due the State from your orator for the current year, which said sum said Tax Collector accepted without prejudice however, to his claim of right to collect the rest and residue of said tax; and the taxes for the City of New Orleans justly and legally due from your orator on the true listing valuation and assessment of your orator's said property is the sum of Thirty-three Dollars, the same being twenty two *mils* on the dollar of said valuation as returned by your orator, which said sum your orator duly tendered to the defendant Otto F. Briede as Treasurer of The City of New Orleans in full of all taxes legally due from your orator for the current year, and the said Treasurer there and then accepted the sum of \$11, the same being the tax imposed upon said item of \$500 for office property but he there and then refused the tender of the balance of said sum, namely, the sum of \$22, which said sum your orator now here brings into Court and tenders to said defendant Otto F. Briede as Treasurer of the City of New Orleans in full of all unpaid taxes justly due or payable by your orator on account of said assessment and levy for the year 1906. And the said John Fitzpatrick as such State Tax Collector, now claims the right and threatens to collect from your orator said sum of \$3,717.60 as the balance of said pretended State Tax, and the said Otto F. Briede as such Treasurer of the City of New Orleans, claims the right to, and threatens to collect from your orator said sum of \$13,653.22 as said balance of said pretended tax levied by The City of New Orleans, and unless restrained by your Honors they will collect the same, and will seize and advertise for sale for said taxes your orator's property.

Ninth. That all that part of said tax in excess of that amount thereof imposed upon said property and said valuation thereof as returned by your orator is unconstitutional and void, and the levy and collection thereof will abridge the privileges and immunities of your orator as a citizen of the United States and deprive your orator of its property without due process of law and deny to your orator the equal protection of the law, for that.—

1. Your orator did not at the time of said assessment, nor at any time prior thereto, nor has it now within said State of Louisiana, or subject to assessment or taxation therein, any Money Loaned on Interest, or Credits, or Bills Receivable for Moneys Loaned or Advanced for Goods Sold. Your orator is informed and believes and upon information and belief states, that said taxing authorities assessed and taxed your orator on said item of Money Loaned on In-

terest, all Credits and Bills Receivable for Money Loaned or Advanced for Goods Sold under the claim of right so to assess and tax your orator for that your orator has made advances in the nature of loans to some of its policy holders who reside within said State of a part of the accumulated value of their respective policies but your

orator disputes said claim and denies said right and avers that 14 the following fully and truly states all the facts in respect to your orator's said advances to its policy-holders and its dealings with them and forms the sole basis of said claim of right so to list your orator's property and to assess and tax your orator as aforesaid, to-wit:

(a) Numerous citizens of said State are insured in your orator under policy contracts which provide that the insured may obtain cash loans from your orator upon the pledge of the policy and its accumulations as collateral security for the loan in accordance with the terms contained in the Company's then existing form of policy loan agreement, the loan to be for such sum as is stated in the policy and to bear interest at 5% per annum payable annually; and your orator pursuant to said terms of its policies had made to sundry of its policy-holders, who at the time of said assessment were then and theretofore had been, residents of said state, such policy loans which then were and still are outstanding. Said loans, however were not, nor were any of them made, within the State of Louisiana, nor was the money so advanced by your orator paid there, nor were any of the papers in connection therewith ever kept on file within said state nor was the same in any manner or form a Louisiana transaction so as to give the same a situs there for purposes of taxation or otherwise, nor was your orator there subject to taxation by reason thereof.

The application for each and every such advance or loan together with the proposed loan contract executed in duplicate and the policy upon the pledge of which the loan was to be made, was forwarded by the applicant either directly or through the medium of your orator's Cashier at its local office within said State and through

15 the mails to your orator at its Home Office in the City of New York where your orator maintains a department known as the Division of Policy Loans, which alone is authorized by your orator to make and makes such loans. At your orator's said Home Office each and all of said applications, loan contracts and policies were there inspected and passed upon by its said Division of Policy Loans and if found to be in due form and to warrant the loan as applied for, then said application was, at said Home Office there and then accepted and said Division of Policy Loans retained one copy of said Loan agreement together with said policy and transmitted by mail to the borrower a duplicate copy of said loan agreement, together with an order on your orator's bankers in the City of New York for payment out of your orator's funds on deposit in said Bank in said City of New York to said borrower of the amount of said loan less any prior indebtedness on the policy of any unpaid premium; that thereafter said borrower duly presented said order at your orator's said bank in the City of New York and there and then

received from said bank the amount thereof. Said loan agreements and policy contracts were in each and every such case, at all times after the loan application was accepted, retained by your orator in its said department of Policy Loans at its Home Office and none of them was ever again returned to or came within the State of Louisiana except the policy, nor was the policy ever again returned to said state unless the policy holder first paid to your orator in cash at its Home Office the amount due on the loan or unless the indebtedness was settled at the Home Office by deducting the

16 amount of it from the reserve on policy and giving the policy-holder non-forfeiture benefits for the excess of the reserve, if any. In either such case the policy and only the policy was returned to the policy-holder and not otherwise, and such was the agreement of the parties. Your orator has not now, nor has it ever had within the State of Louisiana any evidence of any indebtedness for advances or loans on the pledge of its policies as security.

Both the principal of said loans and the interest is, and always has been payable to your orator at its Home Office in the City of New York and is there collected by it. Whenever default occurs, or hitherto has occurred, in the payment of the interest on any one of said loans, it is and always has been, the custom and practice of your orator, to settle the amount due thereon, principal and interest, by satisfying the same at your orator's office in the City of New York, pursuant to the loan contract in such case made and provided. Or, if the policy pledged as security lapses or is forfeited, or matures or becomes a claim by death the amount of said loan is, and always has been, satisfied at the Home Office of your orator in the City of New York out of the reserve on the policy in case of lapse or forfeiture and out of the amount payable under said insurance contract in case of maturity of the policy or the death of the insured. Your orator has never resorted to the Courts of Louisiana for the collection of any one of said loans and does not anticipate doing so,—for the policy pledged as security for the loan to which alone your orator looks for repayment of the loan, is in every instance adequate security, the value thereof is in your orator's custody and

17 control at its said Home Office in the City of New York, and the policy and the loan agreement adequately provide for the satisfaction of the indebtedness out of the value of the policy. In truth and in fact neither your orator nor the policy-holder regards said transaction as an ordinary loan transaction, but regards it as an anticipated payment of a part of the accumulated value of the policy and such your orator believes and understands it to be.

A copy of your orator's customary form of said loan agreement is filed herewith identified as "Exhibit A."

(b) In addition to said policy advances or loans described in the last above paragraph, your orator is further informed and believes and upon information and belief states, that said taxing authorities in listing, assessing and taxing your orator on account of Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold of said pretended valuation of \$568,900 was further influenced and induced thereunto for that,—

After a number of annual premiums have been paid on a policy of life insurance of the class your orator writes, the policy then and thereby acquires a reserve value which may be used either as a basis for making advances of money to the policy holder or may be used by him in making settlement of future premiums. At times holders of such policies are not, or have not, been able or willing at the anniversary of the policy to pay in cash the premium then maturing and in certain such cases your orator has sometimes accepted from such policy-holders the written promise of such policy-holders—

called by your orator for convenience a **Premium Lien Note**—
 18 to pay said premium to your orator at its Home Office in the City of New York, with interest, said policy-holder in and by said written promise agreeing with your orator that if any premium on said policy or interest on said note is not paid when due, said note shall thereupon immediately become due and payable with interest, and shall, without notice of any kind, be paid by deducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due, and that in the settlement of any claim or any benefit under the policy before said note shall have been paid, the amount thereof shall be deducted from the amount otherwise payable to your orator.

At the time of said assessment sundry of your orator's policy-holders residing within said State of Louisiana had heretofore settled annual premiums on their several policies by giving your orator said Premium Lien Notes, each and all of which your orator received from them, held and finally collected, or when the amount thereof should become collectible, would collect as follows, to-wit:

At or about the time of the maturity of that premium in settlement of which in whole or in part your orator finally received such Premium Lien Note, the policy-holder made application to your orator at its Home Office in the City of New York, where your orator maintains a department known as the Note Division of the Comptrollers' Department for the purpose of negotiating and making such agreements, by mail either directly or through the medium of your orator's said local Cashier, for the privilege of settling such

premium in whole or in part by giving your orator such Premium Lien Note upon your orator's customary form. Whenever any such application was received at your orator's said Home Office, your orator's said Note Department there and then ascertained from your orator's Actuary's Department at its said Home Office whether or not said policy had a reserved value that would warrant your orator in receiving a Premium Lien Note in settlement in whole or in part of such premium, and if it had, said Note Department there and then drew up said premium lien note on your orator's customary form, complete in all respects except as to the signature of the maker, and forwarded it through the mails either directly to the policy-holder or through the medium of said local Cashier for signature and return, accompanying the same with a letter stating that the Company would accept such lien note in settlement in whole or in part of said premium, interest to be paid

in advance. As soon as the policy-holder signed said note he then forwarded the same to your orator at its Home Office in said City of New York by mail either directly or through the medium of your orator's said local Cashier, which said note was in each and every case received by your orator at its said Home Office in due course of mail after the date of its execution and your orator there and then at its said Home Office retained and kept said note on file in its said Note Department, and in no instance was any one of said notes ever again returned to the State of Louisiana. But if said Note Department ascertained that the reserve value of said policy would not sufficiently secure the payment of the sum to be named in said note then your orator at its said office there and then declined each such application.

Your orator has not now, nor has it ever had within the State of Louisiana any Money Loaned on Interest, any

Credits or Bills Receivable for Money Loaned or Advanced for Goods Sold evidenced by any such Premium Lien Notes or any other note. But the principal of each and all of said Premium Lien Notes and the interest was, and is, and always has been payable to your orator at its Home Office in the City of New York. Whenever default occurs or hitherto has occurred in the payment of any premium on the policy in respect of which your orator had received a Premium Lien Note or interest on such note, it is, and always has been the custom and practice of your orator, and it has without any exception, collected the amount of said note, at its said Home Office in the City of New York pursuant to the contract therein contained, by satisfying the same out of the reserve on said policy; or if the holder of such policy or the beneficiary thereunder became entitled to the settlement of any claim or any benefit thereunder, it is, and always has been the custom and practice of your orator, and it has, without any exception, collected such premium lien note by deducting the amount due thereon from the amount otherwise payable under said policy contract. Your orator has never resorted to the Courts of Louisiana for the collection of any one of said notes and does not anticipate doing so, for the reserve on said policy in the event of lapse and the amount payable thereunder in the event the same becomes a claim either by death or otherwise, is always sufficient to satisfy the amount of said note and interest, and your orator looks alone to the reserve value of the policy or to the death or other benefits payable under it for repayment thereof, at its said Home Office, said value being at all times in your orator's custody and control at its said Home Office in the City of New York and said note agreement adequately providing for so satisfying the amount payable thereon.

A copy of your orator's customary form of said Premium Lien Note is filed herewith identified as "Exhibit B."

(c) Your orator is further informed and believes and upon information and belief states, that the said policy loan and premium lien note transactions were and are the sole basis upon which said taxing authorities made said listing and assessment under said item of Money Loaned on Interest, all Credits and all Bills Receivable

for Money Loaned or Advanced for Goods Sold of the pretended assessed valuation of \$568,900, and were the sole basis of said valuation placed by them upon said pretended item, and were the sole ground for imposing upon your orator that part of said tax resulting therefrom.

Your orator states that the State of Louisiana and the taxing authorities of the City of New Orleans were and are wholly without authority or jurisdiction so to assess and tax your orator upon said item and said tax to the full extent that the same results from said listing, assessment, valuation and levy is void and of no effect.

2. Your orator is informed and believes and upon information and belief states that said taxing authorities assessed and taxed your orator on said item of Money in Possession, on deposit or in hand, and fixed said valuation thereon at \$51,700, on the ground that your orator then had on deposit in said The City of New Orleans money of the amount and value of said \$51,700 and subject to taxation therein, but your orator avers that your orator did not at the

22 time of said assessment, nor at any time prior thereto, nor has it now within The City of New Orleans, or subject to assessment or taxation therein, Money in possession, on deposit or in hand in excess of said sum of \$1,000, as so returned by your orator, and in this behalf your orator avers that the following is a full, true and correct statement of all the facts in respect of your orator's Money in possession, on deposit or in hand within said The City of New Orleans, to-wit:

(a) At the time of said assessment, and many years prior thereto your orator maintained in said The City of New Orleans, two deposit accounts in the Whitney Central National Bank, known and designated as Number One Account and Number Two Account, respectively, both of which were, and always have been kept in the name of your orator.

(b) It is, and always has been, the duty and practice of your orator's said local Cashier daily to deposit to the credit of your orator in its said Number One Account, all moneys received by him for your orator, except such sum as he was authorized to and did deposit to the credit of your orator in said Number Two Account the maximum credit to which was limited to the sum of \$1,000 as herein-after more fully stated. No person within the State of Louisiana has ever had power or authority to draw, or ever has drawn, against said Number One Account, but the balance to said Account is, and always has been subject solely to the draft of your orator's Treasurer drawn from your orator's said Home Office for said Number One Account is, and always has been, used by your orator for the

23 sole purpose of transmitting to your orator's said Home Office the moneys deposited to the credit thereof by your Orator's said local Cashier; nor have the funds deposited to the credit of said Number One Account or any part thereof ever been used or invested within the State of Louisiana.

It is and always has been the duty and practice of said Cashier daily to report to your orator at its Home Office the amount that day deposited to the credit of said Number One Account, and on Thursday of each and every week your orator's Treasurer has

always, at its Home Office in the City of New York, drawn upon said Number One Account, for the full balance there and then reported to be to its credit, by your orator's draft for said sum there and then mailed to said Bank for said purpose payable in current funds in New York City. Said Number One Account and the moneys deposited to the credit thereof have never been used for any other purpose or in any other way than for the purpose of transmitting the same to your orator's Home Office in the manner aforesaid, and for that reason your orator is informed and believes and upon information and belief states, that all moneys deposited to the credit of said account consist of money in transit which has its situs at the domicile of your orator in the City of New York, and is not subject to taxation within the State of Louisiana.

(c) That said Number Two Account is limited in amount to a maximum credit balance of \$1,000 and is subject to check either of your orator, or of your orator's said local Cashier who is authorized to draw checks against the same solely for the purpose of liquidating the current expenses of said local office and of making other authorized disbursements in connection therewith. The balance to said Number Two Account represents both the cash and credit employed by your orator in its business in The City of New Orleans and in the territory tributary to your orator's said Office within said City. On the first day of January, 1906, the balance to your orator's credit in said Number One Account was the sum of \$999.14.

(d) Except as aforesaid your orator did not have at the time of said assessment, nor theretofore nor has it now within said The City of New Orleans or the territory tributary to its said office within said City, any Money in possession, on deposit or in hand, except a small sum of money in your orator's cash drawer in its said local office, inconsiderable in amount and suitable for the purpose of making change and said return of \$1,000 made by your orator as Money in possession, on deposit or in hand constituted a full, true and correct statement of any money in possession, on deposit or in hand then or theretofore owned or kept by your orator within said The City of New Orleans or subject to taxation therein, unless said balance to said Number One Account is taxable within said City, the average credit balance to which has never exceeded the sum of, to-wit, \$25,000.

(e) Your orator has never had any money on deposit within the State of Louisiana except the money deposited to the credit of said Number One and said Number Two Accounts in said bank. Your orator is informed and believes and upon information and belief states that the supposed balance in said Number One Account to the credit of your orator in said bank was the sole basis upon which said taxing authorities dis-regarded your orator's said return of \$1,000 as Money in possession on deposit or in hand and raised said item to said sum of \$51,700 and was the sole basis of said valuation placed by them upon said item, and was the sole ground for imposing upon your orator that part of said tax resulting therefrom in excess of the tax resulting from an assessed valuation of \$1,000 on account of said item.

Your orator states that the State of Louisiana and the taxing authorities of the City of New Orleans were, and are, wholly without authority or jurisdiction to assess and tax your orator upon said credit balance to said Number One Account and said tax to the full extent that the same results from a valuation and assessment on account of Money in possession on deposit or in hand in excess of the tax resulting from an assessment of \$1,000 upon said item is void and of no effect.

Tenth. Your orator now prays, and at all times heretofore has paid taxes, licenses and fees to the State of Louisiana proportionate to or in excess of those exacted from the citizens of said State and proportionate to those levied upon other foreign corporations, said taxes, licenses and fees so paid by your orator within said State for the year 1905, exclusive of taxes on real estate, being as follows,—the date of payment, the character of the tax license or fee, and the amount thereof, being in the respective columns so entitled,—to-wit:

Date of payment.	Character of tax, license, or fee.	Amount of payment.
1905,		
January,	Filing Annual Statement.....	\$15.00
"	Company's License.....	10.00
"	State License, 1905.....	5,250.00
"	New Orleans License, 1905.....	5,250.00
March,	Shreveport License, 1905.....	300.00
June,	New Orleans Personal Property Tax.....	66.00
July,	State and Levee District Tax.....	21.20
September,	Crowley City License.....	25.00
"	Ruston City License.....	5.20
October,	Lake Charles License, 1902-'3-'4-'5.....	280.00
1905,	Notary Fees.....	10.00
"	Agents' Licenses.....	402.00
		<hr/>
		\$11,634.20

And for the year 1906 your orator has paid within the State of Louisiana for taxes, licenses and fees the respective sums following to-wit:

Date of payment.	Character of tax, license, or fee.	Amount of payment.
1906,		
March,	Filing Annual Statement.....	\$15.00
"	Certificate of Compliance.....	10.00
"	Shreveport License, 1906.....	300.00
"	State License, 1906.....	5,250.00
"	New Orleans License, 1906.....	5,250.00
April,	Lake Charles License, 1906.....	70.00
May,	Rustin License, 1906.....	5.00
June,	New Orleans Personal Property Tax.....	11.00
July,	State and Levee Tax.....	9.00
1906,	Agents' Licenses.....	240.00
"	Notary Fees.....	8.75
		<hr/>
		\$11,168.75

If your orator in addition to the foregoing taxes, licenses and fees is compelled to pay said taxes levied as aforesaid, on said pretended assessed valuations of said several items designated as

27 Money Loaned on Interest all credits and all Bills Receivable for Money Loaned or Advanced for Goods sold and as

Money in possession, on deposit or in hand, the taxes so exacted from your orator will be unequal and unjust as compared with the taxes imposed upon others within the territorial limits of the authority levying the same and will be grossly disproportionate to the value of your orator's property within said territorial limits and will amount to a confiscation of your orator's property.

Eleventh. Your orator further complains and says that the said defendants combining and confederating together to abridge the privileges and immunities of your orator as a citizen of the United States and to deprive your orator of its property without due process of law, and to deny to your orator the equal protection of the law, have demanded of your orator payment in full of said taxes and now threaten to seize your orator's property to enforce payment of the same, and unless restrained by your orator they will persist and continue to persist in demanding and enforcing the payment in full of said unlawful levy of taxes, all of which acts and doings are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises.

For as much as your orator has no adequate remedy at law and can have no adequate relief except in this Court, and to the end therefore that the defendants may, if they can, show why your orator should not have the relief hereby prayed and may make full disclosure and discovery of all the matters aforesaid and according to the best and utmost of their knowledge, remembrance, 28 information and belief full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath an answer under oath being hereby waived.

And that said assessment, levy and tax in so far as it is based upon said item of Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold may be found and decreed to be illegal, void and of no effect and an attempt to deprive your orator of its property without due process of law and to deny to it the equal protection of the law, and that said assessment, levy and tax in so far as the same is based upon the item of money in possession, on deposit or in hand of an assessed valuation in excess of \$1,000 shall be declared null and void and of no effect and an attempt to deprive your orator of its property without due process of law, and to deny to it the equal protection of the law, and that said tax in so far as the same may be based upon said pretended credit to your orator's said Number One Account in said bank may be declared illegal, void and of no effect and an attempt to deprive your orator of its property without due process of law and to deny to it the equal protection of the law, and that the said defendants and each of them, their agents, deputies and representatives and their successors in office and the several successors in office of each of them may be

perpetually enjoined from collecting or attempting to collect said illegal portion of said tax or any part thereof, or from ever asserting any claim of right to collect the same.

And your orator further prays that a provisional or preliminary injunction issue restraining said defendants
29 and each of them, their deputies, agents and representatives and the several successors in office of each of them, from seizing your orator's property or otherwise attempting to collect said tax or any part thereof pending this cause, and for such other and further relief in the premises as the equity of the case may require and to your Honors may seem meet.

May it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said Board of Assessors of the Parish of Orleans, John Fitzpatrick and Otto F. Briele, commanding them and each of them on a day certain to appear and answer unto this bill of complaint and to abide by and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

(Signed) RICE & MONTGOMERY,
FARRAR, JONAS & KRUTTSCHNITT,
Solicitors for Complainant.

(Sig.) JAMES H. MCINTOSH,
Of Counsel.

UNITED STATES OF AMERICA,
State, County and City of New York, ss:

John C. McCall, of lawful age, being first duly sworn, deposes and says that the complainant in the above entitled action is a corporation; that he is Secretary of said corporation and familiar with its business and authorized to make this affidavit *to make this Affidavit*; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his knowledge except as to the matters therein stated upon information and belief, and as to such matters he has been so informed and believes them to be true.

(Signed) JOHN C. McCALL.

Subscribed in my presence and sworn to before me this 29th day of September 1906.

[SEAL] (Sig.) JOHN KIRKLAND,
Clerk, Notary Public, N. Y. County, N. Y.

30

Subpoena to Bd. of Assessors.

Issued October 27, 1906.

UNITED STATES OF AMERICA:

[Vignette.]

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You Are Hereby Commanded to summon the Board of Assessors of the Parish of Orleans to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of December 1906 then and there to answer a Bill in Chancery, filed against it and others wherein the New York Life Insurance Company is Complainant and said Board of Assessors of the Parish of Orleans and others are Defendants.

Herein Fail Not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 27 day of October in the year of our Lord one thousand nine hundred and six and 131st year of American Independence.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk*,

By ————,

Deputy Clerk.

The defendant is hereby notified that it is required to enter its appearance in the Clerk's Office of the United States Circuit Court, on or before the first Monday of December 1906, otherwise the bill may be taken *pro confesso*.

(Signed)

H. J. CARTER, *Clerk*,

By ————,

Deputy Clerk.

[Endorsed:] E. Return, United States Circuit Court, New Orleans Division, No. 13428. New York Life Insurance Company vs. Board of Assessors *et alx*. Subpoena in chancery. Marshal's return.

31

Marshal's Return on Subpoena in Chancery.

Filed October 29th, 1906.

Received by U. S. Marshal, New Orleans, La.,

Oct. 27 '06, and on the 29th day of the same month and year I served copy hereof on the Board of Assessors of the Parish of Orleans, Louisiana by handing the same to the Secretary thereof,

John Glimm, in person, at the office of said Board, in the City of New Orleans, who informed me that none of the Board was present at the time of said service; all having left the City on Saturday October 27th, 1906, and not yet having returned to the office.

(Signed)

VICTOR LOISEL,

U. S. Marshal,

By B. F. QUEEN,

Deputy U. S. Marshal,

32

Subpoena to John Fitzpatrick.

Issued October 27th, 1906.

UNITED STATES OF AMERICA:

[Vignette.]

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon John Fitzpatrick, State Tax Collector of the First District of the City of New Orleans to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of December 1906 then and there to answer a Bill in Chancery, filed against him and others wherein the New York Life Insurance Company is Complainant and said John Fitzpatrick, State Tax Collector of the First District of the City of New Orleans and others are Defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 27 day of October in the year of our Lord one thousand nine hundred and six and 131st year of American Independence.

[SEAL]

(Signed)

H. J. CARTER, *Clerk,*

By ————,

Deputy Clerk.

The defendant is hereby notified that he is required to enter his appearance in the Clerk's Office of the United States Circuit Court, on or before the first Monday of December 1906, otherwise the bill may be taken *pro confesso*.

(Signed)

H. J. CARTER, *Clerk,*

By ————,

Deputy Clerk.

[Endorsed:] E. Return. United States Circuit Court, New Orleans Division. No. 13428. New York Life Insurance Company *vs.* Board of Assessors *et als.* Subpoena in Chancery. Marshal's Return.

33 *Marshal's Return on Subpoena in Chancery.*

Filed October 27th, 1906.

Received by U. S. Marshal, New Orleans, La.,

Oct. 27 '06 and on the same day month and year I served copy hereof on John Fitzpatrick, State Tax Collector of the First District of the City of New Orleans, by handing the same to him in person, in New Orleans, La.

(Signed)

VICTOR LOISEL,

U. S. Marshal,

By B. F. QUEEN,

Deputy U. S. Marshal.

34 *Subpoena to Otto F. Briede.*

Issued October 27th, 1906.

UNITED STATES OF AMERICA:

[Vignette.]

The President of the United States to the Marshal of the Eastern District of Louisiana, Greeting:

You are hereby commanded to summon Otto F. Briede, Treasurer of the City of New Orleans to appear before the Honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court to be holden on the first Monday of December 1906 then and there to answer a Bill in Chancery, filed against him and others wherein the New York Life Insurance Company is Complainant and said Otto F. Briede, Treasurer of the City of New Orleans and others are Defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 27 day of October in the year of our Lord one thousand nine hundred and six and 131st year of American Independence.

[SEAL.]

(Signed)

H. J. CARTER, *Clerk,*

By ———,

Deputy Clerk.

The defendant is hereby notified that he is required to enter his appearance in the Clerk's Office of the United States Circuit Court, on or before the first Monday of December 1906, otherwise the bill may be taken *pro confesso*.

(Signed)

H. J. CARTER, *Clerk,*

By ———,

Deputy Clerk.

[Endorsed:] E. Return. United States Circuit Court, New Orleans Division. No. 13428. New York Life Insurance Company *vs.* Board of Assessors *et als.* Subpoena in Chancery. Marshal's Return.

35 Received by U. S. Marshal, New Orleans, La.,

Oct. 27 '06, and on the 29th day of the same month and year I served copy hereof on Otto F. Briede, Treasurer of the City of New Orleans by handing the same to Vital Tujague, acting Treasurer of the said City of New Orleans, in person, at the office of the said City Treasurer of the said City of New Orleans.

(Signed)

VICTOR LOISEL,

U. S. Marshal,

By B. F. QUEEN,

Dep. U. S. Marshal.

36

Appearance.

Filed Oct. 31, 1906.

United States Circuit Court, New Orleans Division.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

To the Clerk of said Court:

Please enter my appearance as solicitor for the Board of Assessors for the Parish of Orleans in the above suit.

(Signed)

GEO. H. TERRIBERRY,

Solicitor for Board of Assessors.

37

Appearance of State Tax Collector.

Filed November 3rd, 1906.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, JOHN FITZPATRICK as State Tax Collector and OTTO F. BRIEDE as Treasurer of the City of New Orleans, Defendants.

To the Clerk of said Court:

Please enter my appearance as Attorney for the State Tax Collector one of the defendants herein.

(Signed)

F. C. ZACHARIE.

38

Appearance of City of New Orleans.

Filed November 5, 1906.

United States Circuit Court, Eastern District of Louisiana.

No. 13428.

NEW YORK LIFE INSURANCE CO.

vs.

BOARD OF ASSESSORS ET ALS.

City Attorney's Office, Room 10, City Hall, Sam'l L. Gilmore, City Attorney.

NEW ORLEANS, November 5th, 1906.

Hy. J. Carter, Esqr., Clerk, U. S. Circuit Court, City.

DEAR SIR: In the matter of the New York Life Insurance Company of New York *vs.* Board of Assessors *et al.*, No. 13428, of the docket of the U. S. Circuit Court for the Eastern District of Louisiana, please enter the appearance of the City of New Orleans, one of the defendants in said cause, through its solicitors Sam'l L. Gilmore City Attorney, and H. G. Dupre, Assistant City Attorney.

Yours very truly,

(Sig.)

H. G. DUPRE,

Ass't. City Attorney.

(Sig.)

S. L. GILMORE,

City Attorney.

39

Pro Confesso.

Extract from the Chancery Order Book.

FRIDAY, December 7th, 1906.

No. 13428.

NEW YORK LIFE INS. CO.

vs.

BOARD OF ASSESSORS ET ALS.

On motion of Rice & Montgomery, Farrar Jones & Kruttschnitt & James H. McIntosh, Sol'rs for the complainant & on suggesting that all of the defendants herein filed their appearances on or before the rule day in November 1906 & that the rule day in December has passed without the filing by the defendants of any demurrer, plea or answer or without any extension of time from the Court to plead herein.

It is ordered that the bill of complaint herein be taken for confessed as against all the defendants.

Motion to Set Aside Pro Confesso.

Filed Dec. 10, 1906.

United States Circuit Court, Fifth Circuit. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

And into Court come respondents herein and on suggestion that complainant did, on the 7th day of December, 1906, enter in the Chancery Order Book, an order for a judgment for confessed, notwithstanding respondents had, under the rules of equity, till the 7th day of January, 1907, in which to file their answers, and, on further suggestion that, in any event, the matter rests entirely in the discretion of the Court.

It is ordered that complainant show cause on the 15th day of December, 1906, why said order should not be set aside as having been improvidently and prematurely entered, and why respondents should be allowed till the 7th day of January, 1907 to plead.

Dec. 10, 1906.

(Signed)

CHARLES PARLANGE,

*U. S. Judge.**Order Setting Aside Pro Confesso.*

Filed Dec. 15, 1906.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

No. 13428.

THE NEW YORK LIFE INSURANCE COMPANY

vs.

THE BOARD OF ASSESSORS ET ALS.

This cause having been fixed for trial this day upon the Rule taken by the Respondents herein and filed December 10th, 1906, to set aside the *Pro confesso* herein entered against the Respondents on December 7th, 1906, and considering the argument of Counsel for all parties present in Court this day,

It is now ordered, adjudged and decreed that the *Pro Confesso* herein entered against the said Respondents on December 7th, 1906, be set aside upon condition that Respondents file their Answer by the first Monday in January, A. D. 1907, herein.

New Orleans, La., December 15th, 1906.

(Signed)

CHARLES PARLANGE,

U. S. Judge.

42

Answer.

Filed January 5, 1907.

United States Circuit Court, Fifth Circuit, New Orleans Division.
In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

The joint and several answers of the City of New Orleans, the Board of Assessors for the Parish of Orleans, and John Fitzpatrick, State Tax Collector for the First District of the City of New Orleans respondents, to the bill of complaint of the New York Life Insurance Company, complainant —

These respondents, now and at all times hereafter saving to themselves all and all manner of benefit and advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these respondents are advised it is material or necessary for them to answer to, answering say:

Article I.

Your respondents admit the truth of the allegations contained in Article One of Complainant's bill.

Article II.

Your respondents deny the allegation contained in Article Two of Complainant's bill that no money has ever been loaned on interest, nor credits created nor bills receivable for money loaned or advanced for goods sold have ever been taken by complainant in or through said offices or ever kept or deposited there, *by* respondents aver the truth and fact to be that complainant had, at the time said assessment was made, and prior and subsequent thereto money loaned at interest, credits bills receivable for money loaned or advanced for goods sold, all growing out of business done within the City of New Orleans and the State of Louisiana, and assessable and taxable in said City and State in obedience to Section 7 of Act No. 170

43 of 1898. As to all other allegations in said article contained as to powers of complainant's agents, cashiers, and servants employed by complainant in the State of Louisiana and as to the methods which it employs in transacting its business in said City of New Orleans and State of Louisiana respondents have no knowledge of the truth or falsity of such allegations and are entitled to, and demand the strictest and fullest proof thereof.

Article III.

Your respondents have no knowledge of the truth or falsity of the allegations contained in Article Three of complainant's bill and are entitled to, and demand, the strictest and fullest proof thereof.

Article IV.

Your respondents admit the truth of all the allegations contained in Article Four of Complainant's bill except the allegation therein contained that the said business therein described is business done "from and at complainant's said Home Office in the City of New York," but aver the truth and fact to be that complainant has been doing business in the City of New Orleans and State of Louisiana prior to, at, and subsequent to, the making of said assessments for taxation.

Article V.

Your respondents admit all the allegations contained in Article Five of complainant's bill except the allegation that said returns made to the Board of Assessors fully covered all property owned or held by complainant in the Parish of Orleans and State of Louisiana, which allegation respondents particularly deny, and aver the truth and fact to be that complainant had, at the time said assessment was made, in the Parish of Orleans and State of Louisiana cash on deposit or in hand not only in excess of \$1000.00 but, also, actually in excess of \$51,700.00, the amount of said assessment, and too, your respondents aver the truth and fact to be that, at the time said assessment was made, complainant had, in the Parish of Orleans and State of Louisiana, money loaned on interest, credits, bills receivable for money loaned or advanced for goods sold or an amount
 44 and value far exceeding the sum of \$568,900.00, all of which said money loaned on interest, credits, bills receivable for money loaned or advanced for goods sold "arising from business done in this State" are assessable and taxable here regardless of the domicile claimed by complainant, all in obedience to Section 7 of Act No. 170 of 1898 of the General Assembly of the State of Louisiana, which said Section among other things declares it to be the intent and purpose of the law of Louisiana that "no non-resident", either by himself or through any agent shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens, and all bills receivable, obligations, or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative."

Article VI.

Your respondents admit the truth of the allegations contained in Article Six of complainant's bill except the averment that the acts therein alleged to have been done were done "arbitrarily," which said averment respondents particularly deny and aver the truth and fact to be that said assessments were made according to the true facts and the law.

Article VII.

Your respondents admit the truth of all the allegations contained in Article Seven of complainant's bill except the allegation therein contained that complainant made an alternative application for a reduction of the item "open accounts, money loaned at interest, bills receivable etc.," to the sum of \$20,000.00, which said averment respondents particularly deny and aver the truth and fact to be that complainant made no such alternative return and made no such alternative application to the said Board of Assessors and is, therefore, estopped to contest the correctness of the amount of said item of assessment.

Article VIII.

Your respondents admit the truth of all the allegations contained in Article Eight of complainant's bill except the averment that complainant made an alternative application for reduction of the item of "open accounts, money loaned, credits, etc., to \$20,000.00 which said averment is hereby particularly denied, except, also the averment that the taxes due by complainant to the State of Louisiana is Nine Dollars and that due the City of New Orleans is Thirty-three Dollars, which said allegation is also hereby particularly denied, and your respondents aver the truth and fact to be that the amount of taxes due by complainant to the State of Louisiana is \$3,726.60 and that to the City of New Orleans is \$13,661.22.

Article IX.

Your respondents deny all and singular the allegations contained in Article Nine of complainant's bill except such averments therein contained as cover methods of business followed by complainant which said allegations respondents can neither deny nor admit and are entitled to, and call for, the strictest proof thereof.

Your respondents hereby particularly deny the allegation in said article contained that the said assessment on "open accounts, credits, bills receivable, money loaned etc.," whether the same consists of money loaned, past due premiums, or premiums in course of collection, or notes taken for loans made or for premiums due, whether for first premiums or for premiums subsequently due that would otherwise lapse, is unconstitutional and void and that the levy and collection thereof will abridge the privileges and immunities of complainant as a citizen of the United States and deprive complainant of its properties without due process of law and your respondents aver the truth and fact to be that said credits "arise from business transacted in" the City of New Orleans and State of Louisiana, and are, according to, and in obedience to, the direct mandate of Section 7 of Act 170 of 1898, assessable and taxable in the City of New Orleans, the said act declaring it to be the intent and purpose of the law of Louisiana "that no non-resident either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens and all bills receivable,

obligations, or credits arising from the business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident his agent or representative." Your respondents aver that said Act 170 of 1898 and particularly Section 7 thereof are in no respect violative of any provision or provisions of either the Constitution of Louisiana or of that of the United States, and your respondents further aver the truth and fact to be that the assessments levied by the State of Louisiana, through these respondents are just and fair and intended to operate equally on all taxpayers within its jurisdiction.

Your respondents, further answering, particularly deny the averment that complainant, at the time said assessment was made, did not have over One Thousand Dollars on deposit in Bank Account Number Two and over \$2,500.00 in Bank Account Number One, and your respondents aver the truth and fact to be that complainant did have in the aggregate in the two accounts aforesaid an amount far in excess of the sum for which it is assessed on said item of "money in bank" etc., Respondents also particularly deny the allegation that said Account Number One is not assessable in this City and State on the ground and for the reason that the local agent has no authority over it beyond making deposits and respondents aver the truth and fact to be that the amount on deposit in Account Number One was properly and legally assessed for the reason that it is money in this jurisdiction and enjoys the protection of this government and is in no wise distinguished from any other tangible property so situated.

Article X.

Your respondents admit the allegations contained in Article Ten of complainant's bill relative to license taxes by complainant paid but deny the allegation therein contained that if the assessment herein sued upon of "credits, etc." were maintained it would impose an unequal burden upon complainant and would operate as a confiscation — property and respondents aver the truth to be that said assessment was fair and just and is no more than levied against

47 other non-residents and residents having credits of like amount and would not and could not work a confiscation of complainant's property.

Article XI.

Your respondents deny the allegations contained in Article Eleven of complainant's bill, and particularly deny the allegation that respondents have "combined and confederated together to abridge the privileges and immunities of complainant as a citizen of the United States and to deprive it of its property without due process of law and to deny to it the equal protection of the law" and aver the truth and fact to be that the acts herein done by respondents were done in accordance with the law of Louisiana and were in no sense, intent or purpose discriminating against complainant but were intended to operate on all persons equally and alike and respondents further aver that said law of Louisiana as

construed and attempted to be enforced by respondents did not and does not operate as a deprivation of complainant's property without due process of law nor does it deny complainant the equal protection of the law.

Respondents further answering aver that complainant having failed, in its return and application to respondent, the Board of Assessors, to make an alternative request for a reduction of any of the items assessed to it, is estopped by law, from urging in this Court any right to such reduction and all said assessments herein, if maintained at all, must be maintained in their entirety, all in accordance with Sections 25 and 26 of said Act 170 of 1898.

And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's bill contained, material or necessary for these respondents to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain and prove, as this Honorable Court

48 shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained; and respondent Tax Collector prays that there be awarded to the attorney for the State Tax Collector ten per cent. on the aggregate amount of the taxes and penalties herein involved, or so much thereof as may be decreed by this Honorable Court to be maintained, the whole in accordance with Section 57 of Act No. 170 of 1898; and respondents further pray that the writ of injunction herein improvidently issued be dissolved with damages as provided by the laws of the State of Louisiana in such cases made and provided.

(Sig.)

CITY OF NEW ORLEANS.

By SAM'L L. GILMORE, *City Attorney*.

H. G. DUPRE, *Ass't City Attorney*.

Solicitors.

BOARD OF ASSESSORS.

PARISH OF NEW ORLEANS.

By GEO. H. TERRIBERRY, *Solicitor*.

JOHN FITZPATRICK,

State Tax Collector, First District.

By F. C. ZACHARIE, *Solicitor*.

49 *Replication of New York Life Insurance Company.*

Filed Feb. 1, 1907.

United States Circuit Court, Fifth Circuit. New Orleans Division.
In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

The replication of the above named plaintiff to the answer of the above named defendants, the City of New Orleans, The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, State Tax Collector for the First District of New Orleans.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants, is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct and humbly as in and by his said bill he has already prayed.

(Signed) RICE & MONTGOMERY,

FARRAR, JONAS & KRUTTSCHNITT,

Solicitors for Plaintiff.

(Sig.)

JAMES H. McINTOSH, *of Counsel.*

50

Agreement as to Testimony.

Filed Apr. 29, 1907.

United States Circuit Court, Fifth Circuit. New Orleans Division.
In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

It is agreed that the limitation of time in which testimony in the above case can be taken shall be waived and that Complainant shall

be granted such further time in which to take testimony as is necessary.

April 3rd, 1907.

(Signed)

F. C. ZACHARIE.

Att'y for State Tax Collector.

HARRY P. SNEED.

SAML L. GILMORE.

City Attorney.

H. G. DUPRE.

Ass't City Attorney.

Solicitors for the City of New Orleans.

GEO. H. TERRIBERRY.

Solicitor for Board of Assessors.

51 *Hearing, Note of Evidence, and Submission.*

Extract from the Minutes.

November Term, 1907.

NEW ORLEANS, FRIDAY, *December 13, 1907.*

Court met pursuant to adjournment.

Present: Hon. Eugene D. Saunders, District Judge.

No. 13128.

NEW YORK LIFE INSURANCE CO.

vs.

BOARD OF ASSESSORS ET ALs.

This cause came on this day to be heard upon the Bill of Complaint, Answer, Replication, exhibits, proofs and testimony.

Present: James H. McIntosh and Rice & Montgomery Solicitors for the complainant.

F. C. Zacharie, Solicitor for State Tax Collector.

Geo. H. Terriberry, Solicitor for the Board of Assessors.

H. Garland Dupre, Asst. City Attorney for City of New Orleans, and thereupon counsel for the complainant offered the following evidence on behalf of said complainant to-wit:

Testimony of the following witnesses taken on commission in New York City by Charles L. Burr, Notary Public on June 25, 27th and October 12, 1907.

(1) John C. McCall.

(2) John J. Mahoney.

(3) George C. Newton.

(4) Frederick H. Shipman.

(5) John J. Mahoney additional testimony.

EXHIBITS:

1. Agency Agreement—attached to the testimony of John C. McCall and marked "McCall 1."

2. Premium Lien Note—made a part of testimony of John J. Mahoney and marked "Mahoney 1."

3. Blue Note—made part of testimony of John J. Mahoney, and marked "Mahoney 2."

4. Policy Loan Agreement—made part of testimony of George C. Newton.

Exhibits Attached to the Testimony of John C. McCall.

1. Agency agreement—marked McCall 1—made part of the testimony of John J. Mahoney.

2. Premium Lien Note,—marked "Mahoney 1."

3. Blue Note,—marked "Mahoney 2."

Exhibit made part of the Testimony of George C. Newton.

4. Policy loan agreement marked Newton	1.
5. " " " " "	2.
6. " " " " "	3.
7. Application blank " "	4.
8. Receipt blank " "	5.
9. Letter forwarding loan agreement " "	6.
10. Letter advising foreclosure " "	7.
11. " " " " "	8.
12. " " " " "	9.
13. " " " " "	10.
14. " " " " "	11.
15. " " remitting balance " "	12.

Agreement Admitting Certain Facts Marked.

1. "Agreement No. 1" as to applications for reduction of assessment on credits.

2. "Agreement No. 2 as to previous returns and assessment of Complainant.

3. "Agreement No. 3 as to assessment list left with complainant and the blank form attached to the agreement and marked

And thereupon the cause was argued by the Counsel for the respective parties and submitted—when the Court took time to consider; the counsel being allowed until January 1, 1908, to file Briefs.

53 United States Circuit Court Eastern District of Louisiana,
New Orleans. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

CITY OF NEW ORLEANS ET ALS., Defendants.

Agreement to Take Testimony on Interrogatories.

Reserving all legal objections to the competency and admissibility of the interrogatories and cross-interrogatories herein and to the testimony elicited by the same, and waiving affidavit, service of interrogatories and commission,

It is agreed that the testimony of John C. McCall, John J. Mahoney, Frederick H. Shipman and George C. Newton, witnesses on behalf of complainant on the trial of the within cause, may be taken before any Judge of any Court of the United States, or any Commissioner of a Circuit Court or any Clerk, of a Circuit or District Court, or any Notary Public, not being of counsel or attorney to either of the parties or interested in the event of the cause, or any other person, legally competent to administer oaths and receive depositions in the State of Louisiana,—all formalities including proof of the capacity of the officer taking the aforesaid testimony, being hereby waived and dispensed with, except that the interrogatories and cross-interrogatories shall be answered under oath.

The said Commission to be returned to H. J. Carter, Esq., Clerk of the United States Circuit Court for the Eastern District of Louisiana, in New Orleans, Louisiana.

(Signed)

H. G. DUPRE,

Ass't City Atty., Solicitor for City of N. O.

GEO. H. TERRIBERRY,

Solicitor Brd Assessors.

F. C. ZACCHARIE,

H. P. SNEED,

Solicitors for Tax Collector.

RICE & MONTGOMERY,

Solicitors for Complainant.

54

Interrogatories.

In the Circuit Court of the United States for the District of Louisiana,
New Orleans, Louisiana.

Number 13428.

NEW YORK LIFE INSURANCE COMPANY, Complainant,
vs.
CITY OF NEW ORLEANS ET AL., Defendants.

Interrogatories propounded to JOHN C. McCALL, JOHN J. MAHONEY, FREDERICK H. SHIPMAN, and GEORGE C. NEWTON, witnesses for Complainant, residing in or about New York, State of New York, their answers thereto, under oath, to be used in behalf of Complainant on trial of within cause.

JOHN C. McCALL.

First Interrogatory. Please state your name, place of residence and occupation?

Second Interrogatory. What are the duties of your occupation?

Third Interrogatory. You may state whether or not you are familiar not merely with the several departments of the complainant under your immediate supervision, but with the Company's business and method of doing business generally, and especially in the State of Louisiana?

Fourth Interrogatory. If you answer affirmatively to the last Interrogatory, then you may state how long you have had this familiarity and how you acquired it.

55 Fifth Interrogatory. You may state in a general way what the company's organization has been during recent years and is in the State of Louisiana, and the method employed by it in transacting its business in that State.

Sixth Interrogatory. Did the several classes of employees that you have named cover the entire list of the Company's employees or representatives in any and every capacity in the State of Louisiana during the year 1906, or at any time within said year?

Seventh Interrogatory. How long has the Company had in the State of Louisiana persons in its employ of the several classes that you have named?

Eighth Interrogatory. And during the time you have stated, were such persons the Company's only employees or representatives in any capacity within the State of Louisiana?

Ninth Interrogatory. You may state in detail what the duties, powers and authority of the New Orleans Branch Office were during the year 1906, and also from the time of the organization of that office down to 1906?

Tenth Interrogatory. Are you familiar with the duties, powers and authority during the year 1906, and for the years preceding that year, of the several employees who, you say, were in the Company's

employ during the year 1906 or any part of it, in Louisiana? If so, you may state fully what they were and the business done by them respectively.

Eleventh Interrogatory. You may state whether or not the Company has ever had a representative in the State of Louisiana authorized to, or engaged in loaning money on interest for it, or creating credits on open accounts or otherwise, or taking bills receivable for money loaned and advanced for goods sold?

Twelfth Interrogatory. Did any of the Company's employees or representatives in the State of Louisiana ever have power or authority to, or did they ever loan money on interest, or create credits on open accounts or otherwise, or take bills receivable for money loaned, or receive money advanced for goods sold, or make, alter or discharge contracts, or invest the Company's funds or any part thereof.

Where, if you know, is, and has the business of the Company always been transacted, involving money loaned on interest, credits or creating of credits, bills receivable for money loaned or advanced for goods sold, making, altering or discharging contracts, and the investment of the Company's funds or any part thereof?

Fourteenth Interrogatory. You may state, if you know, whether or not the complainant during the year 1906, or at any time in said year, had any money loaned on interest, or credits, or bills receivable for money loaned or advanced for goods sold to any persons who were residents of the State of Louisiana, and if it had, you may describe the kind and character thereof.

Fifteenth Interrogatory. You may state whether or not during the year 1906, or at any time within said year, the complainant had within the State of Louisiana, any money loaned on interest, credits or bills receivable for money loaned or advanced for goods sold?

Sixteenth Interrogatory. Starting say from the year 1897, you may state whether or not complainant has made return each year to the Board of Assessors, for the Parish of Orleans, of its personal property in the City of New Orleans?

Seventeenth Interrogatory. If you say yes, you may state whether or not prior to the year 1905, you have ever made return of any property under the head of "Money Loaned on Interest, all credits, bills receivable for money loaned and advanced for goods sold."

Eighteenth Interrogatory. If you say no, you may state whether or not any complaint has ever been made to the Company, by the Board of Assessors, or any notice or intimation given the Company by the Board of Assessors that the returns made were incorrect, or that the Company had any loans or credits which should be assessed and taxed in New Orleans, Louisiana, or whether or not said Board of Assessors made any inquiries in regard to any money loaned on interest, any credits, bills receivable for money loaned or advanced for goods sold before the assessment for 1906, was made by said Board and published.

Nineteenth Interrogatory. Starting from 1897 and ending with the year 1905, you may state if you can, for what items and for what

amount the complainant was assessed each year on personal property in the City of New Orleans by the Board of Assessors for the Parish of Orleans, and what amount of taxes, if any, were paid by Complainant each year on personal property in the City of New Orleans?

58

JOHN J. MAHONEY.

First interrogatory. Please state your name, age, place of residence and occupation?

Second interrogatory. How long have you been occupied in the position which you say you now hold?

Third interrogatory. What are, and during all the time of your employment with the complainant in the position you say you now hold, have continuously been your duties?

Fourth interrogatory. You may state whether or not the complainant had ever taken, owned or been interested in within the State of Louisiana or in connection with its business in said State or otherwise any bills receivable for money loaned on interest or advanced for goods sold or bills receivable taken for any purpose or promissory notes, and if so, you may state to what extent giving the nature and character thereof.

Fifth interrogatory. You may state whether or not the circumstances under which the complainant has taken, received, owned or acquired an interest in any such notes or bills receivable, and the method of negotiating making and completing the transaction and the complainant's system and method of taking, keeping, collecting and dealing therewith have always been the same.

Sixth interrogatory. You may state fully when and under what circumstances the complainant has accepted such notes or bills receivable what its method has been in negotiating, making and completing the transaction and describe where and how it has at all times taken, kept and collected and dealt therewith?

Seventh interrogatory. You may state how long the complainant has pursued the Course described in your answer, to the last question in respect to such notes or bills receivable?

Eighth interrogatory. You may state whether or not the complainant at any time during the year 1904 owned or had any interest in any notes, or bills receivable in or in connection with its business, in the State of Louisiana, except those negotiated, made, received, taken, accepted, collected and dealt in in the manner you have described in your answer to Sixth Interrogatory?

Ninth interrogatory. You may state whether or not the complainant has ever resorted to the the Courts of Louisiana or any other jurisdiction for the collection of the notes or bills receivable you have described?

Tenth interrogatory. In accepting such notes on what does the Company place its reliance for their final payment?

Eleventh interrogatory. You may state whether or not the Company has ever demanded payment of any of such notes?

Twelfth interrogatory. You may state what the Company's practice has always been in respect to the renewal of these notes and the satisfaction of the debt evidenced by them?

Thirteenth interrogatory. You may state how the Company collects and always has collected the interest on these notes?

Fourteenth interrogatory. You may state whether or not any interest payment is ever endorsed on the premium lien note? If so, when, where and by whom?

50 Fifteenth interrogatory. You may state whether or not any person within the State of Louisiana has ever been authorized by the Company to accept or has ever accepted for it a premium lien note?

Sixteenth interrogatory. You may state, if you can, the amount of any such notes given by Louisiana policy holders, within the Jurisdiction of the New Orleans Office, and outstanding on January 1st, 1906.

61

FREDERICK H. SHIPMAN.

First interrogatory. Please state your name, age, place of residence and occupation?

Second interrogatory. How long have you been employed in your present occupation with the complainant?

Third interrogatory. And for the time that you have been in the employ of the complainant what have been your duties?

Fourth interrogatory. Are you familiar with the Complainant's method of handling its funds at all times during the year 1906, and also at all times during your employment with the complainant, in the City of New Orleans, whether its funds so handled are classified as money in possession, on deposit or in hand or otherwise?

Fifth interrogatory. You may fully state what the complainant's method was of handling all funds belonging to it, or in which it had any interest within the City of New Orleans or the territory tributary to the New Orleans Branch Office of the complainant, or which the complainant received by way of New Orleans, at all times during the year 1906?

Sixth interrogatory. You may give, if you can, the balance standing to these several bank accounts in the City of New Orleans on Thursday of each week during the month of January, February, March and April, 1906, and before you and your associates at the Home Office drew your draft for the balance to said several accounts on that day in each of said weeks, or if you prefer to give the balance for any other day in each week you may do so.

62 Seventh interrogatory. You may state whether or not the balances to these several accounts, as you have given them in answer to the last question are representative of the maximum balances carried to the credit of the Company under each of these several accounts at any time during the year 1906, and if there is any balance to the credit of any of said accounts on any particular date that is, or on its face appears to be unusual, you may explain the same?

Eighth interrogatory. You may give if you can, the balance standing in these several bank accounts in the City of New Orleans, on January 1st, 1906.

First interrogatory. Please state your name, age, place of residence and occupation.

Second interrogatory. How long have you been employed in the position you now hold with the complainant?

Third interrogatory. What was your occupation before your present employment?

Fourth interrogatory. What is the division in which you are employed and what are its duties and functions?

Fifth interrogatory. How long have the functions of your division been what in the answer to the last question you have said they now are?

Sixth interrogatory. What were the duties and functions of said Division before they became what you say they now are?

Seventh interrogatory. Prior to the creating of the Division of Policy Loans in 1900 where and how were policy loans negotiated, made and the Company's business in respect thereto transacted?

Eighth interrogatory. You may state if you know whether or not the complainant has ever made to policy holders or other persons residing or being within the State of Louisiana any policy loans except those made at the Home Office in one or the other of the departments or divisions therein which you say has had charge of that business?

Ninth interrogatory. From your knowledge of the complainant's business, business methods and your duties as an employee of the company are you able to state from your personal knowledge the methods which have always been employed by the complainant in making all its policy loans and to give the procedure which it has always followed in policy loan transactions? If so you may state fully.

Tenth interrogatory. You may state, if you know, whether or not the complainant has ever made within the State of Louisiana any loans of money on interest or acquired any credits with the said state for moneys loaned or advanced for goods sold?

Eleventh interrogatory. You may state whether or not your answer to the above ninth interrogatory calling for the methods which the Company has always employed in making all its policy loans and for the procedure which it has always followed in policy loan transactions includes every transaction of the kind or class referred to which the Company has ever had with any person residing in the State of Louisiana?

Twelfth interrogatory. In making loans on policies you may state, if you know, on what the Company places its reliance for their final payment?

Thirteenth interrogatory. If a person who has borrowed money from the Company on the security of his policy pays the loan, where, if you know, is the payment made?

Fourteenth interrogatory. What is the Company's procedure if it receives from a borrower the amount of the loan?

Fifteenth interrogatory. If a policy-holder in undertaking to pay

his loan fails to remit the principal amount due, what is your procedure?

Sixteenth interrogatory. Where if you know is the interest on policy loans collected?

Seventeenth interrogatory. Since the creating of the Division of Policy Loan Securities you may state if you know whether or not that Division has since its creation been clothed with the authority and performed the duties and functions about policy loans you have already testified were performed by your Division prior to the Creation of the Division of Policy Loan Securities in so far as the Company's action after completing the loan transaction is concerned?

Eighteenth interrogatory. You may state if you know whether or not the forms and methods of procedure in handling policy loans at all times after a loan has been completed have been the same since the Division of Policy Loan Securities was created as they were before that date?

(Signed) RICE & MONTGOMERY,
FARRAR, JONAS & KRUTTSCHNITT,
Solicitors.

(Signed) JAMES H. McINTOSH,
Of Counsel.

United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

The Board of Assessors of the Parish of Orleans, City of New Orleans, and John Fitzpatrick, State Tax Collector of the First District of the Parish of Orleans, defendants in the above entitled and numbered cause, reserving the benefit of all manner of exceptions and objections to the admissibility, relevancy or competency of any of the interrogatories propounded by the complainant herein to John C. McCall, John J. Mahoney, Fred H. Shipman and George C. Newton, propounded the following cross interrogatories.

Cross-Interrogatories to Be Answered by John C. McCall.

Cross interrogatory No. 1. If in answer to the Third Interrogatory you state your familiarity with the Company's business and method of doing business in the State of Louisiana, please answer with great particularity and detail, showing the entire course of business, annexing to your answer your contract with the Agent of said Company in this State, also your contracts with your various sub-agents in this State, supplying, also one copy of each printed form used by

your Company or your agents, in your dealings with each other in reference to State business.

Cross-interrogatory No. 2. In answering Interrogatory Number Six, please give the same data with reference to the year 1905; and wherever you are interrogated by the complainant for information, data, or course of business in the year 1906, please extend your replies so as to include therein such information for the year 1905.

67 Cross-interrogatory No. 3. Please state whether or not there has been any change in the method of doing business of your Company in Louisiana in recent years; and if so, when such change took place, and what was the nature thereof.

Cross-interrogatory No. 4. Please be careful, in your answer to Interrogatory No. 11 to state all facts in connection with the business of the New York Life Insurance Company in loaning money to its policy-holders in the State of Louisiana, and refrain from injecting therein any legal deductions that may appear to you justified therefrom. Please state in detail how applications for loans by your policy-holders in Louisiana are initiated; with whom filed; by whom transmitted to you; what action thereon is had by the New York office; to whom same is returned, whether to your Louisiana Agent or to the policy-holder direct; in what form payment of the amount of such loan is made by you; by whom notices of interest due on such loans are issued; to whom is payment made of such annual interest; whether an annual agreement to renew such loan from your New York office or not, is necessary; and how final liquidation of such transaction is had when the policy-holder takes up such loan. And always be careful to state, when answering these Cross Interrogatories, to what extent your Louisiana Agents and Sub-Agents are made use of in all matters concerning your Louisiana business; and please annex as part of your answer to this Cross Interrogatory, all forms used by your Company or your Agents in Louisiana, from the time application is made for a loan up to the payment thereof by the policy-holder.

Cross-interrogatory No. 5. Please read your answer to Interrogatory No. 12, and state whether or not such is not in fact only a legal inference or deduction on your part.

68 Cross-interrogatory No. 6. State whether or not all loans made by you to, and all interest earned by you from, policy-holders in Louisiana, is not the outcome of business done by you in Louisiana, and in obedience to the contract entered into by you with policy-holders in Louisiana.

Cross-interrogatory No. 7. In answering Interrogatory No. 14, please give the data therein asked for in so far as the year 1905 is concerned.

Cross-interrogatory No. 8. Kindly read again your answer to Interrogatory No. 15 and state whether or not same is not simply a deduction of law on your part.

Cross-interrogatory No. 9. Please state, in your answer to Interrogatory No. 16, what year your Company began to do business in Louisiana, and whether its returns of property subject to taxation

to the Board of Assessors have ever included anything beyond office furniture and fixtures; and also state what that amount has averaged. Please state also the amount of business done by your Company in the State of Louisiana during the year 1905, and 1906, respectively.

Cross-interrogatory No. 10. Please state whether or not it is the custom of your Company, or whether it was the practice in 1905 and 1906, to grant policy-holders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Cross-interrogatory No. 11. In answering these Interrogatories and Cross Interrogatories please state fully how and when you obtained such information.

69 *Cross-Interrogatories to be Propounded to John J. Mahoney.*

Cross-interrogatory No. 1. In answering Interrogatory No. 4, please confine yourself to facts, and eliminate from your answer any conclusions of law. Please state in detail the entire manner of doing business in this State by your Company, particularly with reference to the loan feature of your business, giving with specific particularity every step from the time a policy-holder applies for a loan up to the time that such loan is liquidated. Please be careful to state the channel through which each step is taken, how the amount of the loan is paid by you, by whom the annual interest is collected, and all the other incidents of your business in this connection.

Cross-interrogatory No. 2. In answering Interrogatory No. 5, with respect to the years 1905 and 1906, please state where your head office in the State of Louisiana was located and what relations existed between your State Agent and his Sub-Agents, and whether or not business emanating from other points outside of the City of New Orleans, in Louisiana was transacted through the main office in the City of New Orleans, if you should testify that said main office was in the City.

Cross-interrogatory No. 3. In answering Interrogatory No. 6, be careful to confine yourself to statements of fact, and avoid any conclusions of law.

Cross-interrogatory No. 4. If, in answering the Ninth Interrogatory, you state that the Company has not had recourse to the Courts of Louisiana, please state how you know such fact.

Cross-interrogatory No. 5. Please state, in answer to the Twelfth Interrogatory, what feature the State Agent in Louisiana is in the matter of renewals of these loans; and whether or not, by simply payment of interest to him, such loan is renewed without the necessity of confirmation of such renewal by the home office in

70 New York; and whether or not, upon continued payment of the annual interest, such loan will not be renewed by your Company, from year to year, without specific instructions from your home office to your Agent in Louisiana.

Cross-interrogatory No. 6. In answering Interrogatory No. 13, please state to what extent your State Agent in Louisiana is instrumental in such collections.

Cross-interrogatory No. 7. Please explain what a premium lien note is, and what part it plays in loan transactions with your policy-holders.

Cross-interrogatory No. 8. Please extend the information given by you in answer to Interrogatory No. 16 so as to show the amount of outstanding loans to policy-holders in Louisiana made by your Company on each day of the year 1905 and on the first day of January 1906.

Cross-interrogatory No. 9. Please state whether or not it is the custom of your company, or whether it was the practice in 1905, and 1906, to grant policy-holders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Cross-interrogatory No. 10. Please state specifically how and when you obtained sufficient information to answer to foregoing Interrogatories and Cross Interrogatories.

71 *Cross-Interrogatories to be Propounded to Fred. H. Shipman.*

Cross-interrogatory No. 1. If you know, please state how funds collected by your State Agent and his sub-Agent in Louisiana were handled during the year 1905, and in 1906; in what bank or banks deposited; by whom deposited; in whose names any and all accounts were carried; what authority any person in Louisiana had with reference thereto, particularly with regard to checking against same. Please state specifically the use you make, and how you make it, of Bank Accounts "A" and "B" if you testify you have such bank accounts.

Cross-interrogatory No. 2. Please state whether collections made in the parishes (counties) outside of the Parish of Orleans are transmitted to your State Agents in the City of New Orleans, and whether or not all final collections and disbursements growing out of Louisiana business are not made by him.

Cross-interrogatory No. 3. Kindly extend the data asked for in Interrogatory No. 6 so as to show the amount regardless of outstanding drafts, checks, etc., on each day of the year 1905, as well as the first day of 1906, held in any bank in the State of Louisiana representing your Company's business in that State; and if there are more than one such account, please give this information with reference to each account separately; and please further state how you are in a position to testify to the data asked for by Counsel for complainant, as well as Counsel for defendant in these particulars.

Cross-interrogatory No. 4. Please state whether or not it is the custom of your Company, or whether it was the practice in 1905

and 1906, to grant policy-holders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of
 72 his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Cross-interrogatory No. 5. Please state specifically how and when you obtained the information sufficient to answer the foregoing Interrogatories and Cross Interrogatories.

Cross-Interrogatories to be Propounded to George C. Newton.

Cross-interrogatory No. 1. If, in answer to Interrogatory No. 5, you state that the functions of your Division are not now what they formerly were, please particularly state what they formerly were, and what they are now calling attention to such changes, as have taken place; and please particularly state, also, what the functions of your Department were for the year 1905 and for the year 1906.

Cross-interrogatory No. 2. In answering Interrogatory No. 7, please extend such information so as to cover fully the years 1905, and 1906.

Cross-interrogatory No. 3. In answering Interrogatory No. 8, please confine yourself absolutely to statements of fact, and avoid any and all conclusions of law. Please state particularly what use in such matters was made of your State Agent for Louisiana, omitting no detail whatever in such statement.

Cross-interrogatory No. 4. In answering Interrogatory No. 9, extend the answer so as to cover particularly the years 1905, and 1906.

Cross-interrogatory No. 5. In answering Interrogatory No. 10, confine yourself to the statement of facts, and eliminate conclusions of law.

73 Cross-interrogatory No. 6. In answering Interrogatory No. 13, omit no detail or step whatever in the course of such business and particularly set forth what use is made of your State Agent for Louisiana.

Cross-interrogatory No. 7. In answering Interrogatory No. 14, be careful to give the whole course and every detail of the transaction, and especially state in full what part the State Agent for Louisiana plays therein.

Cross-interrogatory No. 8. In answering Interrogatory No. 15, be full and explicit as to your procedure in such matters from beginning to end and especially state in full what use therein is made by you of your State Agent for Louisiana.

Cross-interrogatory No. 9. In answering Interrogatory No. 16, confine yourself to facts and avoid conclusions of law.

Cross-interrogatory No. 10. In answering Interrogatory No. 17, please state in full what was in 1905 and 1906, the Division of Policy Loan Security.

Cross-interrogatory No. 11. Please state whether or not it is the custom of your Company, or whether it was the practice in 1905 and

1906, to grant policy-holders an extension of time within which to pay their premiums; and whether or not for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, and if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Cross-interrogatory No. 12. Please state specifically how and when you obtained sufficient information to answer the foregoing Interrogatories and Cross Interrogatories.

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(Signed)

SAML. L. GILMORE,

City Atty.

H. G. DUPRE,

*Asst City Atty.**Solicitors for the City of New Orleans.*

GEO. H. TERRIBERRY,

*Solicitor for the Board of Assessors
of the Parish of Orleans.*

F. C. ZACHARIE,

HARRY P. SNEED,

*Solicitors for John Fitzpatrick, State
Tax Collector of the First District
of the Parish of Orleans.*

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Depositions on Behalf of Complainant.

In the Circuit Court of the United States for the Eastern District of Louisiana, New Orleans, Louisiana.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

CITY OF NEW ORLEANS ET AL., Defendants.

Depositions on Behalf of Complainant.

STATE OF NEW YORK,

County and City of New York, ss:

Be it known That acting under and by virtue of the annexed commission issued in the above entitled cause and the authority in me vested, I, Charles L. Burr, a Notary Public duly commissioned and qualified for and residing in the State, County and City of New York, caused personally to come and appear before me on this twenty-fifth day of June, at the hour of nine o'clock in the forenoon of said day, the several witnesses named in the annexed commission, and hereinafter named, and after having first carefully examined, cautioned and solemnly sworn said witnesses, and each of them according to law to tell the truth, the whole truth and nothing but

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the truth, and truthfully to answer said interrogatories and cross interrogatories, I did then propound to them severally the said interrogatories and cross interrogatories, to which they severally made answer as follows, to-wit:

JOHN C. McCALL, of lawful age, being by me first carefully examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposeth and saith as follows:

First interrogatory. Please state your name, place of residence and occupation?

Answer to first interrogatory. My name is John C. McCall; my place of residence is in New York City, in the State of New York, and by occupation I am Secretary of the New York Life Insurance Company, complainant.

Second interrogatory. What are the duties of your occupation?

Answer to second interrogatory. As Secretary of the complainant it is my duty to receive all communications to the company, to distribute them to the several departments, to conduct the general correspondence of the company, and as such Secretary I have general supervision of the following departments of the company in the Home Office, to-wit: The Division of Policy Issues, Division of Policy Indexes, Division of Policy Records, Division of Policy Briefs, Division of Policy Changes, Division of Policy Loans, Division of Policy Loan Securities, Division of Policy Claims, and the Division of Files and Records.

Third interrogatory. You may state whether or not you are familiar not merely with the several departments of the complainant under your immediate supervision, but with the company's business and method of doing business generally, and especially in the State of Louisiana?

Answer to third interrogatory. I am.

Fourth interrogatory. If you answer affirmatively to the last interrogatory then you may state how long you have had this familiarity and how you acquired it.

Answer to fourth interrogatory. I have had this familiarity ever since I have been Secretary and before that time. I have been Secretary of the company for more than four years. As such Secretary I have been a member of several Committees, notably the office Committee of the company, which is charged with the duty of regulating the general conduct of the company's business not specifically assigned to some other committee, and which said committee is composed of Executive Officers of the company and Two Trustees. Before I became Secretary I was for some time Assistant Secretary. During the whole course of my employment with the complainant I have devoted my entire time and energies to its business, and in the performance of my various duties in the company's employ I have always been able to keep, and have kept, in close touch with its business generally everywhere, including its business in Louisiana.

Fifth interrogatory. You may state in a general way what the company's organization has been during recent years and is in the state of Louisiana and the method employed by it in transacting its business in that State.

78 Ans. to fifth interrogatory. The Company's organization and method of doing business in Louisiana has always been in a general way similar to its organization and method of doing business in each of the States. Insurance companies usually do busi-

ness in the state or locality through general agents. Several years ago commencing, as I recall it, in 1892 or 1893, this company started out to discontinue what was known as the general agency system and to adopt a system eliminating the general agent, and under which each person in the company's employ or working for it was directly under contract with the company and responsible to the company. This system involved establishing in various large centers of population local offices to facilitate the acquisition of new business, and for the convenience of policyholders in paying their premiums, through which soliciting agents in the locality forwarded to the Home Office their applications, and which have been used as a convenience for communication between the Home Office of the company and applicants for insurance and between the Home Office and the company's policyholders. This local office is called a branch office, but strictly it is not a branch office. No contracts are ever made there and no discretion is exercised by the office; no money has ever been loaned on interest, nor credits created nor bills receivable for money loaned or advanced for goods sold have ever been taken by the complainant at its New Orleans branch office, nor have any such ever been kept by the complainant or deposited at that office.

The person in charge of the local office is called cashier.

79 The company's other employees in connection with its Louisiana business are and for more than ten years last past have been a special agent called supervisor of agencies, whose authority has always been limited to matters connected with the acquisition of new insurance, also an agency director, whose authority is limited to negotiating contracts of employment of new soliciting agents, instructing them in their duties and generally supervising their work, a considerable number of agents employed for the purpose of soliciting applications for insurance, having no other duties or authority, a number of medical examiners, whose duties are limited solely to examining and reporting on applicants for insurance, and then some persons called inspectors, to whom the company is accustomed to apply for special information about the moral hazard of applicants for insurance. These several classes of persons constitute and for more than ten years last past have constituted the company's entire organization in the State of Louisiana, these persons so employed having a contract directly with the Home Office of the company.

Sixth interrogatory. Did the several classes of employees that you have named cover the entire list of the company's employees or representatives in any and every capacity in the State of Louisiana during the year 1906, or at any time within said year?

Answer to sixth interrogatory. They did, except, of course such persons as might be in the company's employ in one or the other of these branch Offices as clerks under the cashier, and charged with the duty, under the direction of the cashier, of helping him to perform the duties of that office.

Seventh interrogatory. How long has the company had in the State of Louisiana persons in its employ of the several classes that you have named?

Answer to seventh interrogatory. For a good many years past, certainly for more than ten years before 1906.

Eighth interrogatory. And during the time you have stated, were such persons the company's only employees or representatives in any capacity within the State of Louisiana?

Answer to eighth interrogatory. They were, except possibly for a short period of that time down to as late as 1897 or 1898 the company's general agency in Louisiana known as the agency of Mr. Dinkelspiel was still in process of liquidation.

Ninth interrogatory. You may state in detail what the duties, powers and authority of the New Orleans Branch Office were during the year 1906, and also from the time of the organization of that office down to 1906?

Answer to ninth interrogatory. The local office in New Orleans was established by the Company and has been maintained by it to promote the acquisition of new business and for the convenience of policy holders in paying their premiums and for communicating between persons applying for insurance, also policy holders and
81 and the Home Office of the company. For the purposes of the New Orleans Branch Office its jurisdiction has for several years past included the counties of Assumption, Acadia, Ascension, Cameron, Calcasieu, East Feliciana, East Baton Rouge, Iberville, Iberia, Jefferson, Lafourche, Livingston, Lafayette, Orleans, Point Coupee, Plaquemines, Tangipahoa, Terrebonne, St. Martin, St. John the Baptist, St. Helena, St. Charles, St. Bernard, St. James, St. Tammany, St. Landry, St. Mary's, Vermillion, West Feliciana, West Baton Rouge, and Washington. If a soliciting agent of the company took an application for insurance on the life of any person residing within this territory, the agent's report of the application, the application and the medical examiner's report were forwarded to the New Orleans Office for transmission to the Home Office, which in turn made report on the application to the agent who took it through the New Orleans Office; or, before premiums on policies written on the lives of residents in this territory become due, it has been the duty of the New Orleans Office to transmit by mail to such policyholders notice of the due date of premium, the amount of it, and the information usually given in such notices, whenever such notice was prepared at the Home Office and forwarded by it to the New Orleans office for such transmission. When the premiums become due and payable persons within the territory of this office usually paid them at the New Orleans office where they were by that office deposited in a bank account kept by the company in the city of New Orleans, subject solely to the draft of the company drawn from the Home Office, except a small amount to another account of the company, the balance to which under the company's rules never
exceeded the sum of \$1,000. If the premiums were not paid

82 when due, the New Orleans office would sometimes communicate with the policyholder by letter, sending him a form of letter prepared by the Home Office for that purpose. The New Orleans Office has not, nor has it ever had, power or authority to accept risks of any kind, to make, alter or discharge contracts, to ex-

tend the time of paying any premium except in special and unusual instances where the extension of time was made in writing by taking what the company calls a blue note agreement under and in accordance with express rules of the company which the New Orleans Office had no power or authority to deviate from, nor has it ever had power or authority to waive forfeitures, or to name any extra premium for extra risks or privileges, or to accept promissory notes or anything but cash in payment of the whole or any part of any premium, or to loan money on interest or otherwise, or to grant or create credits, or to take or accept bills receivable for money loaned or advanced for goods sold, nor has the New Orleans Office ever done any of these things. The office is not clothed with authority to make, nor has it ever made, contracts of any kind. All business of the company involving the making of contracts, loaning of money, or creating credits, is transacted solely at the Home Office of the company in the City of New York.

Tenth interrogatory. Are you familiar with the duties, powers and authority during the year 1906, and for the years preceding that year of the several employees who, you say, were in the company's employ during the year 1906 or any part of it, in Louisiana? If so, you may state fully what they were and the business done by them respectively.

Answer to tenth interrogatory. Yes, I am. The duties of the cashier of the New Orleans office were to perform the duties devolving upon the New Orleans Branch Office, as I have described
83 them in answer to a previous question, and these duties he performed and none other. The cashier is the person in charge of that office and responsible for its management. Under him were as many clerks as the business of the office required. The cashier was the responsible head of the office.

In some localities the company had, during the year 1906, an employee called an Inspector of Agencies, but in Louisiana there was no Inspector of Agencies during that year or at any time during 1906, but the duties usually devolving upon an Inspector of Agencies were performed by an employee called a Supervisor of Agencies, whose duties were to supervise generally the acquisition of new business in the territory covered by the New Orleans Branch Office, and in the territory covered by several other Branch Offices. The business of the Supervisor of Agencies was confined solely to the acquisition of new business and he had no other power or authority. He had nothing whatever to do with loans or investments or anything of that kind, or with creating credits or taking bills receivable, except that he had authority in certain cases to advance small sums to agents in anticipation of commissions to be earned by them.

The company never had at any time in 1905 or 1906 an Agency Director in New Orleans. The Agency Director for Louisiana was at Shreveport. He was charged with the duty of procuring persons to enter the company's employ as soliciting agents, instructing them about insurance, and more directly dealing with the acquisition of new business in the locality. He had no power or authority to make loans or investments or anything of that kind, or to create credits or

84 take bills receivable, and did not do so, except to a limited extent he could advance to agents small sums in anticipation of commissions to be earned by them.

The soliciting agents were persons employed under contract with the company for the purpose of soliciting applications for insurance. Their authority was confined solely to this, unless expressly required by the company to perform some other act in connection with the acquisition of new business. They were expressly prohibited from accepting risks of any kind, making, modifying or discharging contracts, extending the time for paying any premium, from binding the company by any statement, promise or representation, from waiving forfeitures or any of the company's rights or customary requirements. They have never had anything to do with the making of loans or the creating of credits or taking bills receivable.

The medical examiners are professional men, physicians and surgeons, whose duty it has been to examine persons applying to the company for insurance. They have never had anything to do with the making of loans or creating of credits or taking bills receivable.

Eleventh interrogatory. You may state whether or not the company has ever had a representative in the State of Louisiana authorized to, or engaged in loaning money on interest for it, or creating credits on open accounts or otherwise, or taking bills receivable for money loaned and advanced for goods sold?

Answer to eleventh interrogatory. It has not.

85 Twelfth interrogatory. Did any of the company's employees or representatives in the State of Louisiana ever have power or authority to, or did they ever loan money on interest, or create credits on open accounts or otherwise, or take bills receivable for money loaned, or receive money advanced for goods sold, or make, alter, or discharge contracts, or invest the company's funds or any part thereof.

Answer to twelfth interrogatory. No, they did not, with this possible exception.—The Supervisor at New Orleans has always had authority to advance a limited sum of money to agents to promote the acquisition of new business in anticipation of commissions to be earned by them. The sums so advanced, however, are not large. On January 1st 1906, they aggregated the sum of \$4,092.12. Nor are they of their face value. Indeed, the company does not reckon them of any value at all in its official statement of assets, and there takes no credit for them. My answer is "No," unless these advances can be so regarded.

Thirteenth interrogatory. Where, if you know, is, and has the business of the company always been transacted, involving money loaned on interest, credits or creating of credits, bills receivable for money loaned or advanced for goods sold, making, altering or discharging contracts, and the investment of the company's funds or any part thereof?

Answer to thirteenth interrogatory. These several things are, and always have been, done at the Home Office of the company in the City of New York, and not elsewhere, except to some extent at the company's office of Issue in the City of Chicago, and also at the com-

pany's Paris Office of Issue, and to a limited extent under certain conditions at certain Branch Offices in some localities now discontinued, however, but never within the State of Louisiana.

86 Fourteenth interrogatory. You may state, if you know, whether or not the complainant during the year 1906, or at any time in said year, had any money loaned on interest, or credits, or bills receivable for money loaned or advanced for goods sold to any persons who were residents of the State of Louisiana, and if it had, you may describe the kind and character thereof?

Answer to fourteenth interrogatory. It did not have with persons who were residents of Louisiana any money loaned on interest, except loans on interest to some of its policyholders residing in the State of Louisiana, made at the Home Office of the company on the security and pledge there of their several policies, and except premium lien notes. It had no credits unless the advances to agents I have described be called such. It had no bills receivable for money loaned or advanced for goods sold except a form of note which possibly may be classed as bills receivable which the company calls a premium lien note, and which is a note sometimes accepted from a policyholder in lieu of cash for a premium.

Fifteenth interrogatory. You may state whether or not during the year 1906, or at any time within said year, the complainant had within the State of Louisiana, any money loaned on interest, credits, or bills receivable for money loaned or advanced for goods sold?

Answer to fifteenth interrogatory. It did not. At that time the company had made to certain of its policyholders residing in Louisiana loans secured by the pledge of their policies, and had 87 taken from some of them in lieu of cash for premiums, premium lien notes, but none of these loans were had, made or received within the State of Louisiana; they were each and all of them made and received at the Home Office of the company in the City of New York, where the consideration was paid and where they were retained, collected, or payment thereof enforced when they became payable under the rules and practice of the company.

Sixteenth interrogatory. Starting from the year 1897, you may state whether or not complainant has made return each year to the Board of Assessors, for the Parish of Orleans, of its personal property in the City of New Orleans?

Answer to sixteenth interrogatory. I have no personal knowledge from which to answer this question.

Seventeenth interrogatory. If you say yes, you may state whether or not prior to the year 1906, you ever made return of any property under the head of Money Loaned on Interest, all credits, bills receivable for money loaned and advanced for goods sold."

Answer to seventeenth interrogatory. The returns themselves ought to show this; I do not know.

Eighteenth interrogatory. If you say no, you may state whether or not any complaint has ever been made to the company by the Board of Assessors, or any notice or intimation given the company by the Board of Assessors that the returns made were incorrect, or that the company had any loans or credits which should be assessed

and taxed in New Orleans, Louisiana, or whether or not said Board of Assessors made any inquiries in regard to any money loaned on interest, any credits, bills receivable for money loaned or advanced for goods sold, before the assessment for 1906 was made by said Board and published.

Answer to eighteenth interrogatory. No complaint has ever been made to the company by the Board of Assessors of the City of New Orleans, or any other Board there, for its failure to return any item of value of the sort described in the seventeenth interrogatory, nor has the company ever received any notice or intimation from the Board of Assessors of the City of New Orleans, or any other Board there that any of its tax returns were incorrect for the failure to return any sum of the kind described in the seventeenth interrogatory, nor has the company ever received any notice or intimation that it had any loans it should be taxed for in New Orleans, nor did the Board of Assessors to the best of my knowledge and belief, and my position is such that I am satisfied I would have knowledge thereof if the same were true, ever make any inquiries in regard to any money loaned on interest, all credits, or bills receivable for money loaned or advanced for goods sold, before the assessment for 1906 was made by said Board and published as the same is complained of in this suit, or at any other time.

Nineteenth interrogatory. Starting from 1897 and ending with the year 1905, you may state, if you can, for what items and for what amount the complainant was assessed each year on personal property in the City of New Orleans by the Board of Assessors for the Parish of Orleans, and what amount of taxes, if any, were paid by complainant each year on personal property in the City of New Orleans?

Answer to nineteenth interrogatory. I do not know the items and the amount of the assessment for each year on personal property during the time stated in the question. The company's personal property tax for each of those years was as follows:

Year.	Amount
1897	\$80.00
1898	50.00
1899	22.00
1900	22.00
1901	60.75
1902	60.75
1903	120.75
1904	115.50
1905	60.00

Answers to Cross-interrogatories Proposed by John C. McCull

Cross-interrogatory No. 1. If in answer to the Third Interrogatory you state your familiarity with the company's business, and method of doing business, in the State of Louisiana, please answer with great particularity and detail, showing the entire course of

business annexing to your answer your contract with the agent of said company in this State, also your contracts with your various sub-agents in this State, supplying, also, one copy of each printed form used by your company, or your agents, in your dealings with each other in reference to State business.

90 Answer to cross-interrogatory No. 1. My answers heretofore given I think cover the requirements of this interrogatory so far as it calls for particularity and detail. The company does not have a State Agent nor sub-agents and has not had since about 1893. For the purpose of giving the information which I suppose was intended to be called out by this question, I would state that the contract between the company and the cashier of the New Orleans Office, just as the contracts between the company and its cashiers everywhere, was oral. The person the company appointed as cashier of its New Orleans Office performed the duties of that office during the years 1905 and 1906 at a salary of \$125 a month. The cashier is under bond for the protection of the company on account of money coming into his hands. His duties consist in receiving from soliciting agents and transmitting to the company applications for insurance and receiving from the company and transmitting to the agent for delivery and collection of the premium, policies written on such applications, and in receiving and depositing in the required bank account any premium paid at his office, and giving to the policyholder a receipt for the same, and the duties generally described in my answers heretofore given. The cashier was the person in charge of the New Orleans Office, and during the year 1905 the payroll of all the employees in that office, including the cashier, was \$435 a month, and during the year 1906 the payroll of all the employees in that office, including the cashier, was \$490 a month, the number of employees in the office including Cashier, Stenographer, office boy and every other person, never exceeding eight.

The Supervisor of Agencies in Louisiana for 1905 and 1906 was Mr. H. J. Saunders, and his contract of employment was as follows:

91 *Confidential.*

NEW YORK, December 19, 1904.

Mr. H. J. Saunders, New Orleans, La.

DEAR SIR: Referring to your arrangements with this company, this letter, when accepted by you in writing, will serve to terminate all existing agreements and to express the terms of your employment from and after January 1st, 1905, as follows.

First. As Supervisor, you shall devote your entire time, talents and energies to the service of the New York Life Insurance Company in securing new agents and in procuring business, and in promoting the general interests of the company in connection with the territory assigned to you; and you shall be guided by the rules and instructions of the company as given you from time to time.

Second. The territory under your supervision, until further notice, shall be the territory covered by the following Branch Offices:

Shreveport, New Orleans, Jackson, Mobile, and Birmingham; but it is expressly understood that the company may, from time to time, change the territory as it is deemed advisable by the officers of the company.

Third. You shall receive a salary at rate of \$500.00 per month, until further notice, payable monthly, together with your actual and necessary travelling expenses when away from New Orleans, La., engaged on the business of the company; satisfactory vouchers to be rendered the company monthly.

Fourth. It is agreed that on the business personally procured by you, on which there is no other charge to the company, you shall be entitled to a first year's commission of 60%, graded both by amount and plan, in accordance with the company's schedule of grading in contracts at present being made, and a bonus renewal commission for the second year of assurance, on the minimum volume of paid personal business (\$25,000 to \$40,000), that the company allows to agents under the terms and conditions specified with agents under its L-C form of contract now in use.

92 Fifth. It is agreed that if the ratio of expense as shown by the company's rate book of the Branch Offices named in section 2nd of this agreement, taken as a whole, for the year 1905, should your agreement continue so long, does not show an increase over the total ratio of the same offices for the year 1904, as shown by the company's ratio-book as of December 31st of each year, and the paid business reported on Company's transcripts from the said offices exceeds the paid business from the same territory for the year 1904, by 5%, you shall be entitled to a bonus of \$500.

If the business from said offices reported as above, during 1905, exceeds that of 1904 by 10%, and the expense ratio does not show an increase for said year, you shall be allowed an additional bonus of \$500.

If the business from said offices reported as above, during 1905, exceeds that of 1904 by 20%, and the expense ratio does not show an increase for said year, you shall be allowed an additional bonus of \$500.

If the business from said offices reported as above, during 1905, exceeds that of 1904 by 20%, and the expense ratio does not show an increase for said year you shall be allowed an additional bonus of \$500.

Sixth. It is agreed that if the new placed insurance reported on the company's transcripts from the New Orleans Branch, during the year 1905, should your agreement continue so long, amounts to \$3,000,000 (Term Insurance excluded), you shall be allowed a bonus of \$1000.

If the amount of placed insurance reported on transcripts during said period, as above, amounts to \$3,200,000, you shall be allowed an additional bonus of \$1000.

Yours truly,

NEW YORK LIFE INSURANCE COMPANY,
By THOS. A. BUCKNER, *Vice-President*.

I hereby approve, ratify and accept the foregoing terms and conditions.

H. J. SAUNDERS.

93 The clause in the first paragraph of Mr. Saunders' contract, namely, "and in promoting the general interests of the company in connection with the territory assigned to you" was understood by the parties, and has always been construed as meaning the promotion of the general interests of the company in the acquisition of new business. Mr. Saunders has never had any authority to make loans for the company, and has never made any such loans, or had anything to do therewith, nor has he had any authority over the company's bank account there or elsewhere—except to the limited extent to which he might make advances to agents in the way I have already stated.

His contract was amended March 20, 1905. The amendment related solely to the fifth section and to the bonus therein referred to. His contract was amended again January 8, 1906, but the amendment related solely to the fifth and sixth paragraphs thereof, and to the bonus therein referred to. His contract was amended again February 1, 1906, but the amendment related solely to his bonuses and renewal commissions. His contract was amended again November 23, 1906, but the amendment related solely to his commissions on applications taken by him. His contract was amended again January 26, 1907, but the amendment related solely to his salary. His contract was again amended March 14, 1907, but the amendment related solely to his compensation and commissions, and the same is true of another amendment made May 1st, 1907.

The company had no Agency Director at New Orleans. Its Agency Director at Shreveport, Mr. W. E. Millsaps, had no duties except those stated in my answer to the tenth interrogatory: His original contract of employment was as follows:

94 Mr. W. E. Millsaps, Shreveport, La.:

DEAR SIR: You are hereby appointed Agency Director of the New York Life Insurance Company, said appointment to take effect January 1st 1903, and to continue until further notice, and to be subject to all the following terms and conditions, to-wit:—

1st. You shall devote your entire time and abilities subject to the company's rules, to the procurement of new business, and to the performance of such other duties as may be from time to time required.

2nd. You shall receive a salary at the rate of One Hundred and Sixty Six Dollars and Sixty Six cents (\$166.66) per month until further notice, payable monthly, together with your actual and necessary travelling expenses when away from Shreveport, Louisiana, engaged on business of the Company, satisfactory vouchers to be rendered the company monthly.

3rd. It is agreed that you shall be entitled to a brokerage commission of Sixty per cent (60%) graded both by amount and plan in accordance with the company's schedule or grading in contracts

at present being made, on business personally procured by you, on which there is no other charge to the company.

4th. It is agreed that on the regular Accumulation business procured by new agents brought into the company's service by you, during the first twelve calendar months of the continuance of their agreements with the company (should your agreement continue so long) made on the company's regular contract forms, on which there is no similar charge to the company, upon which the annual premiums are duly paid to, and received by, the company in cash, in due course, during said period, or within thirty days thereafter, you shall be entitled to a bonus of Two Dollars (\$2.00) per thousand policies on which less than one full year's premiums are paid to count *pro rata*.

5th. It is agreed that if the total amount of new business paid for on the Cashier's transcripts through the Shreveport Branch during the year 1903, shall equal or exceed One Million, five Hundred Thousand Dollars (\$1,500,000) you shall be allowed a further bonus of Five Hundred Dollars (\$500.00) semi-annual and quarterly premiums to count *pro rata*. Term insurance not to count. If Two Million Dollars (\$2,000,000) of insurance is secured under the above conditions, an additional bonus of Five Hundred Dollars (\$500.00).

6th. To establish your interest in contracts you make with agents, your initials must be affixed to same.

95 7th. It is agreed that all other agreements are hereby terminated.

Yours truly,

NEW YORK LIFE INSURANCE COMPANY
By THOS. A. BUCKNER, *Fourth Vice-President*.

Accepted:

W. E. MILLSAPS,

Countersigned by

HAMILTON COOK,

Inspector of Agencies.

Mr. Millsaps' contract was amended December 11, 1903, but this amendment related solely to his compensation. It was again amended December 30, 1903, but the amendment related solely to his compensation. It was again amended February 3, 1904, but this amendment related solely to his compensation. It was again amended December 28, 1904, but the amendment related solely to his compensation. It was amended again February 1, 1906, but the amendment related solely to his compensation. It was amended again February 21, 1906, but the amendment related solely to his compensation. It was amended again November 23, 1906, but the amendment related solely to his compensation.

The number of persons in the company's employ as soliciting agents reporting their business through the New Orleans Branch Office during the year 1905 averaged about seventy, and for 1906

averaged about fifty or less. Their contracts were all substantially alike, made up on a printed form which is attached hereto, marked "McCall's Exhibit 1" and made a part hereof. Wherever the con-

96 tracts of the soliciting agents differed, it was generally in the rate of compensation or some special agreement bearing on that subject. No such agent ever had any authority to make, alter or discharge any contract, nor to make any loan or invest any money, nor did any one ever do so. Their business was confined solely to the acquisition of new business and duties incident thereto.

Cross-interrogatory No. 2. In answering interrogatory Number Six, please give the same data with reference to the year 1905; and wherever you are interrogated by the complainant for information, data, or course of business in the year 1906, please extend your replies to as to include therein such information for the year 1905.

Answer to cross-interrogatory No. 2. My answer to Interrogatory Six applies also to the year 1905 as well as 1906. The company's organization, methods of doing business and the authority of its employees in Louisiana was the same in 1906 and in 1905.

Cross-interrogatory No. 3. Please state whether or not there has been any change in the method of doing business of your company in Louisiana in recent years; and, if so, when such change took place, and what was the nature thereof.

Answer to cross-interrogatory No. 3. The answer to this interrogatory is contained in the answers to my direct interrogatories, especially my answer to Interrogatories three, five and nine. The change in 1892 and 1893 consisted of the abandonment of the state agency system, and the adoption of the system described in my answers to my direct interrogatories. The method then adopted

97 has been followed ever since and is still in force.

Cross-interrogatory No. 4. Please be careful, in your answer to interrogatory No. 11, to state all facts in connection with the business of the New York Life Insurance Company in loaning money to its policyholders in the State of Louisiana, and refrain from injecting therein any legal deductions that may appear to you justified therefrom. Please state in detail how applications for loans by your policyholders in Louisiana are initiated; with whom filed; by whom transmitted to you; what action thereon is had by the New York Office; to whom same is returned, whether to your Louisiana Agent or to the policy holder direct; in what form payment of the amount of such loan is made by you; by whom notices of interest due on such loans are issued; to whom is payment made of such annual interest; whether an annual agreement to renew such loan from your New York Office or not, is necessary; and how final liquidation of such transaction is had when the policyholder takes up such loan. And always be careful to state, when answering these Cross Interrogatories, to what extent your Louisiana Agents and Sub-Agents are made use of in all matters concerning your Louisiana business; and please annex, as part of your answer to this Cross Interrogatory, all forms used by your company, or your agents, in Louisiana, from the time application is made for a loan up to the payment thereof by the policyholder.

Answer to cross-interrogatory No. 4. Loans to policyholders are of two classes,—loans on the pledge of policies, and premium lien note loans or settlements with the company. The company 98 has for years maintained at its Home Office a Division under my direction known as the Division of Policy Loans, of which Mr. George C. Newton is Superintendent. This Division is employed exclusively in making and handling policy loans. Applications for loans to policyholders of Louisiana are initiated by the policyholder writing directly to the Home Office or communicating with the Home Office through the office in his locality. If the matter comes to the point of an application for a loan, the policyholder either writes a letter or signs the company's application form and sends it through the mail directly to the Home Office, or by way of the company's office in the locality, where, at the Home Office it is received in the Division of Policy Loans and filed there; it is never filed anywhere else.

In the Division of Policy Loans when such application is received, the policy contract, the state of premium payments, the title to the policy, and all other things necessary to determine whether or not the company will make the loan, are investigated, and if the company concludes to accept the application it is accepted by the Division of Policy Loans at the Home Office, and word to that effect sent to the policyholder either directly by mail or through the company's office in the locality. If the company accepts the loan, the loan agreement is made up in duplicate in the Division of Policy Loans of the Home Office, and when so made up is transmitted to the policyholder either directly through the mail, or by way of the company's office in the locality, for signature, and when signed is returned to the Home Office with the policy, in the same way that the application came, usually.

When the papers are received here, if the papers are found 99 to be properly executed, and accompanied by the policy as a pledge to secure the loan, the Division of Policy Loans draws a warrant on the Treasurer of the company at the Home Office for the amount of the loan, and the Treasurer in response thereto sends to the Division of Policy Loans a check for the amount of the loan, drawn on the company's bank account in the City of New York, and payable in the City of New York, except loans to Canadian policyholders and California policyholders. The Division of Policy Loans then sends the check by mail either directly to the borrower or to the borrower by way of the office in the locality.

Notice of interest due on such loans, as well as on premium lien note loans is made up in the Comptroller's Department in the Home Office at the same time with, and as a part of the notice of premium, and is sent by mail to the policyholder at least fifteen, and not more than forty-five days before the due date of the premium and interest, the interest on all loans being made payable the due date of the premium. These notices showing the amount of premium and interest due are made up in the Comptroller's Department of the Home Office and are usually sent to the office in the locality for actual mailing to the policyholders. The annual interest is always payable at the Home

Office and the notice is sent to the policyholders so states, but the notice usually also authorizes the policyholder to pay it at the office in his vicinity, which is named in the notice. The policyholder pays it either by remitting directly to the Home Office or by remitting to the authorized local office.

The receipt of the premium and interest at the Home Office, 100 the company treats as a continuation of the loan and never takes any formal action in respect of renewal. If the premium or interest is not paid when due, the loan is foreclosed at the Home Office. If a policyholder pays his loan, it is always paid at the Home Office and final liquidation of the loan is always made at the Home Office, whether it is liquidated by cash payment or by foreclosure, or out of the payment of a benefit under the policy. No person representing the company in Louisiana has ever had anything to do with the making of loans, except to transmit such papers as the company sent them, or the policyholder gave them, for that purpose, or, to receive and transmit such interest payment as the policyholder gave them for that purpose, and like services, but nothing in any way involving the exercise of judgment or discretion of the making of a contract. I shall ask the Superintendents of the Division of Policy Loans and of the Note Division to make a part of their depositions the forms in use in their respective divisions.

Cross-interrogatory No. 5. Please read your answer to Interrogatory No. 12, and state whether or not such is not in fact only a legal inference or deduction on your part.

Answer to cross-interrogatory No. 5. I have read it and I do not think it is.

Cross-interrogatory No. 6. State whether or not all loans made by you to, and all interest earned by you from, policyholders in Louisiana, is not the outcome of business done by you in Louisiana, and in obedience to the contract entered into by you with policyholders in Louisiana.

101 Answer to cross-interrogatory —. Loans made by the company to policyholders in Louisiana are made because the policyholders hold policy contracts and have paid in cash premiums enough to create a reserve which makes their policy contracts adequate security for the loans, and because they have made application to the company for such loans, and the Division of Policy Loans on investigating the policy and the title to it was satisfied the policy as a pledge would adequately secure the repayment of the loan. In such cases the company makes a loan on the policy regardless of where the policy was written. The interest is earned on policy loans because the borrower has agreed to pay the interest. If all the company's policyholders were to move into Louisiana their policies would be as good security for loans and they would be as much entitled to loans as if they had always lived in Louisiana; or, if every policyholder in Louisiana moved out of the State their policies would be just as good security for loans and they would be equally entitled to the loans, and the company would make loans to them. Some policy contracts provide for loans; some do not. As a rule, the company will make a loan on the security of any policy

upon which premiums in cash have been paid so as to create a reserve which will fully secure the repayment of the amount of the loan applied for whether the policy provides for loans or not.

Cross-interrogatory No. 7. In answering Interrogatory No. 14, please give the data therein asked for in so far as the year 1905 is concerned.

102 Answer to cross-interrogatory No. 7. My answer to Interrogatory No. 14 is the same for the year 1905 as for the year 1906.

Cross-interrogatory No. 8. Kindly read again your answer to Interrogatory No. 15, and state whether or not same is not simply a deduction of law.

Answer to cross-interrogatory No. 8. I do not believe my answer to Interrogatory No. 15 is a deduction of law.

Cross-interrogatory No. 9. Please state, in your answer to Interrogatory No. 16, what year your company began to do business in Louisiana, and whether its returns of property subject to taxation to the Board of Assessors have ever included anything beyond office furniture and fixtures; and also state what that amount has averaged. Please state also the amount of business done by your company in the State of Louisiana during the years 1905 and 1906 respectively.

Answer to cross-interrogatory No. 9. This company began to write policies in Louisiana in 1847. The Civil War interrupted its business there, and it resumed business in 1867. As I said before, I do not have personal knowledge of the company's tax returns in New Orleans. My understanding is that our assessment there has included money in hand and in bank as well as office furniture and fixtures. The value of the office furniture and fixtures has always been small, probably never would sell for more than \$500.

The company has never had property of any considerable consequence within the State. The taxes, licenses and fees which it has paid are unquestionably in excess of those paid by other

103 persons and corporations doing business within the State, proportionately, except other life insurance companies, these amounting, in the several years hereinafter named, to the following:

Year.	Amount of taxes, licenses, and fees paid.
1906	\$11,168.75
1905	11,634.20

The personal property taxes paid for 1897 to 1901, inclusive, I have hereinbefore given. The general state and City of New Orleans so called license tax paid in each of the following years, exclusive of fees, certificates, other city licenses and agents' licenses, were as follows:

Year.	Amount.
1904	\$10,500.00
1903	10,500.00
1902	10,500.00
1901	9,750.00
1900	8,850.00
1899	8,250.00
1898	3,500.00
1897	3,500.00

The fees, certificates, other city licenses and agents' licenses for each of the above years I have not obtained because of the detail required to get them, but they would be approximately the same as the corresponding items alleged in the bill as paid for 1906 and 1905, these items not amounting to a very large sum.

Calling these large annual contributions to the public revenue licenses, does not make them any easier to pay, nor justify other still larger exactions. This annual license tax in Louisiana, just as the similar tax paid to other States, has everywhere been regarded as the company's real contribution to the public revenue and in New York State where a license tax is paid similar to that paid in Louisiana, except at a lower rate, and where the company's loans are made and its securities are kept, all these loans and securities are exempt from taxation by express provision of law. Indeed, if all invested and uninvested funds of life insurance companies were subjected to the sort of tax involved in this suit, the inevitable final result would be the insolvency of this and of every other life insurance company similarly taxed and that at no very distant day. The company makes loans to its policyholders practically all over the world, and this is the first instance where it has ever been proposed anywhere to tax it on account of them.

In 1905 the company's new insurance in Louisiana amounted to \$5,725,528, of which \$3,207,434 was in the territory tributary to the New Orleans Office. In 1906 the company's new insurance in Louisiana amounted to \$3,363,000, of which \$2,722,426 was in the territory tributary to the New Orleans Office. The first year's premiums for new insurance in Louisiana for the year 1905 were \$207,359.49, and for the year 1906 amounted to \$131,493.77. The total amount of all premiums, both first year and renewal, received from Louisiana policyholders in 1905, was \$1,243,188.72, and for 1906 amounted to \$1,251,854.13. In 1905 the premiums paid the company through its New Orleans Office amounted to \$797,759, and in 1906 amounted to \$789,767. In 1905 the company paid to its Louisiana policyholders in death losses, endowments, surrender values, dividends and annuities, exclusive of dividends applied to the payment of premiums, \$519,174.28, and in 1906 the sum of \$120,127.88.

105 These figures, in answer to the part of the interrogatory calling for the amount of business done in the State, I have obtained from the company's statistician, who is engaged in and about the preparation of such figures, and the figures relating to the

payments made to Louisiana policyholders I obtained from the Superintendent of our Policy Claims Department, under my control, and I believe they are all full, true and correct.

Cross-interrogatory No. 10. Please state whether or not it is the custom of your company, or whether it was the practice in 1905 and 1903, to grant policyholders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances?

Answer to cross-interrogatory No. 10. No, except in certain cases where a policyholder wished to pay his premium but did not have the money to pay with, the company in certain cases made with him an agreement called the company's blue note agreement.

Cross-interrogatory No. 11. In answering these interrogatories and cross interrogatories please state fully how and when you obtained such information.

Answer to cross-interrogatory No. 11. I obtained the information for answering these interrogatories and cross interrogatories 106 from knowledge acquired in the daily transaction of the duties of my employment with the company and wherever I have given specific figures I have, as a rule, obtained them from the original records of the company showing these figures, or from the employees of the company in charge of the specific matter about which the exact figures were required in these answers. In every case, however, I personally know the answers to be true, unless the answers otherwise so state.

(Signed)

JOHN C. McCALL.

Subscribed in my presence and sworn to before me this 25th day of June, 1907.

(Signed)

CHAS. L. BURR.

Notary Public, New York Co., N. Y.

The hour of five o'clock having arrived the further taking of these depositions was adjourned until tomorrow morning at ten o'clock at the same place.

(Signed)

CHAS. L. BURR.

Notary Public, New York Co., N. Y.

107 This agreement, made this — day of — in the year one thousand nine hundred and —, between the New York Life Insurance Company, party of the first part, and — of — in the County of — and State of —, party of the second part, Witnesseth, that said parties, in consideration of the mutual covenants and agreements hereinafter mentioned, hereby mutually covenant and agree each with the other, as follows, to wit:

That said party of the first part doth hereby appoint said party of the second part as Agent of said party of the first part, for the

purpose of canvassing for applications for insurance on the lives of individuals, and of performing such other duties in connection therewith as may be required by the officers of said party of the first part, and that this appointment is made on the following terms and conditions:

1st. It is agreed that said party of the second part shall have no authority on behalf of said party of the first part to make, alter or discharge any contract, to waive forfeitures, to extend the time of payment of any premium, or to waive payment in cash. It is further agreed that said party of the second part shall have no authority on behalf of said party of the first part to receive any money due or to become due to said party of the first part, except on applications obtained by or through him in exchange for conditional receipts to be furnished by said party of the first part, or on policies or renewal receipts (signed by the President, a Vice-President, a Second Vice-President or Secretary) sent to him for collection.

2nd. It is agreed that said party of the second part shall act exclusively as Agent for said party of the first part, and as such Agent shall devote his entire time, talents and energies to the business of the Agency hereby established, and in the conducting of it shall be governed strictly by the book of "Instructions to Agents" issued from time to time by the said party of the first part and by such other instructions as he may receive from the said party of the first part. All applications for insurance taken by said party of the second part shall be delivered to said party of the first part, whether the same has been reported on favorably or unfavorably by the medical examiner.

3rd. It is agreed that said party of the second part shall keep regular and accurate statements of all transactions for account of said party of the first part and whenever required by said party of the first part, or its authorized Agent, shall transmit to said party of the first part a report in detail, embracing every item of business done by or through him, and of all moneys collected or received by or through him, for said party of the first part.

4th. It is agreed that all books of account, documents, vouchers, and other books or papers connected with the business of said Agency, shall be the property of said party of the first part, whether paid for by said party of the first part or not, and at any and all times shall be open to said party of the first part or its representative, for the purpose of examination, and shall be turned over to said party of the first part or its representative on the order of said party of the first part, or on termination of said Agency.

5th. It is agreed that all moneys or securities received or collected by said party of the second part for or on behalf of said party of the first part, shall be securely held by him as a fiduciary trust, and shall be used by him for no personal or other purpose whatever, but shall be by him immediately paid over to said party of the first part, in accordance with its instructions; and it is expressly stipulated and agreed between the parties hereto, that in case said party of the second part shall withhold any funds, policies

or receipts belonging to said party of the first part, after such funds, policies or receipts should have been reported upon and transmitted to said party of the first part, or if he shall withhold any funds, policies or receipts after they shall have been demanded from him in writing, by said party of the first part, such dereliction shall work a forfeiture to said party of the first part, unconditionally, of all claims whatsoever, accrued or to accrue under this or any previous agreement to said party of the second part, but nothing herein shall be construed to affect any claims of said party of the first part on said party of the second part.

110 6th. It is agreed that the District within which said party of the second part shall have permission to operate, is—

7th. It is agreed that said party of the second part shall thoroughly and ably canvass said above-named District; that said party of the first part may, at its option, employ other Agents in said District, and that said party of the second part shall have no claim for commissions or other remuneration on the business effected by such other Agent or Agents so employed.

8th. It is agreed that if in any case said party of the first part shall deem it proper in consequence of misrepresentations made, or misunderstandings had, at the time of the issue of a policy, to return the premiums thereon and cancel it, said party of the second part shall lose all right to commissions for premiums under said policy, and shall be bound to repay to said party of the first part, on demand, the amount of commissions received on premiums so returned.

9th. It is agreed that said party of the second part shall collect and promptly remit to said party of the first part all premiums on policies not issued through his instrumentality, renewal receipts for which may be furnished him from time to time by said party of the first part.

111 10th. It is agreed that the necessary expenses for medical examinations (except as provided in section 17th hereof), and for expressage on documents and other things sent by said party of the first part to said party of the second part, shall be paid by said party of the first part; and that said party of the first part shall furnish to said party of the second part such a supply of blanks and circulars as it shall deem reasonable, to enable him to carry on business as said Agent, as aforesaid; and that said party of the first part shall be liable to pay no charge other than as herein stated, or as shall hereafter be allowed by special written permission of said party of the first part.

11th. It is agreed that said party of the first part may offset against any claims for commissions under this agreement, any debt or debts due at any time by said party of the second part to said party of the first part.

12th. It is agreed that said party of the second part shall not enter the service of any life insurance company other than said party of the first part, or place any applications for insurance in any other life insurance company, without the consent in writing of

said party of the first part, so long as there is any indebtedness of any nature whatever due to said party of the first part.

13th. It is agreed that the ledger account of said party of the first part shall be competent and conclusive evidence of the state of the accounts between the parties hereto. Said party of the first

112 part agrees to furnish to said party of the second part a copy of said account (not oftener, however, than once a month) upon receipt of written request to that effect from said party of the second part, due allowance to be made for clerical delays.

14th. It is agreed that said party of the second part shall keep deposited with said party of the first part a Bond for the faithful performance of this agreement, and of all duties pertaining to said Agency, satisfactory to said party of the first part.

15th. It is agreed that when premiums on policies of insurance effected with said party of the first part by or through said party of the second part are collected otherwise than by said party of the second part, two per cent. of such premiums shall be deducted from the commission to be allowed herein, for expense of collection; that commissions on premiums on all classes of policies not named in section 20th shall be determined by said party of the first part; that in case any special Agents or other parties acting for said party of the first part shall secure any business conjointly with said party of the second part, the commissions herein provided shall be divided equally between the parties to this agreement, unless specially agreed to the contrary in writing; that when policies that have been issued are changed, and an allowance made on the old policy which is applied to the payment of the new, no commission shall be
113 allowed on the amount thus transferred from the old to the new policy; and that the commissions provided in section 20th shall not apply when the insured is over sixty years of age.

16th. It is agreed that if said party of the second part shall sell or offer to sell directly or indirectly to any person or persons, policies for insurance to be issued by said party of the first part hereunder, at any reduction from the regular Table Rates as furnished to said party of the second part by said party of the first part, said sale or offer of sale shall work an immediate termination of this agreement and a forfeiture of all rights and interest hereunder to said party of the first part.

17th. It is agreed that, in case a policy issued as applied for, shall be subsequently returned by the party of the second part as "not taken," the party of the second part shall pay to the party of the first part such sum of money as shall cover the expense of issuing such policy.

18th. It is agreed that any rights of said party of the second part under this agreement shall not be sold or assigned by him without the consent of said party of the first part in writing, but that either party hereto may terminate this agreement upon thirty days' written notice; and when so terminated, no further commissions or other compensation shall thereafter accrue to said second party.

114 19th. It is expressly understood and agreed between the parties to this agreement, that the same shall be considered strictly confidential, and that under no circumstances shall said party of the second part mention or exhibit the terms thereof to any person or persons, under penalty of forfeiture of the same and of all benefits thereunder.

20th. It is agreed that said party of the second part shall be allowed, under this agreement, the following compensation only, unless otherwise expressly stipulated in writing, namely: a commission on the original cash premiums for the first year of insurance, and, subject to conditions given in paragraph C of this section, upon the second year's premiums, which shall, during his continuance as said Agent of said party of the first part, and only in this event, be obtained, collected, paid to and received by said party of the first part on policies of insurance effected with said party of the first part, by or through said party of the second part, which commission shall be at and after the following rates:

A. On the original cash premiums for the first year of insurance on Accumulation business with 15, 20, 25 or 30-year Accumulation Periods, issued at ages 60 and under,

A. Ordinary Life.....	40%
B. Twenty-Payment Life.....	40%
C. Fifteen-Payment Life.....	30%
D. Ten-payment Life.....	30%
E. Endowments, paid by 20 or more annual premiums.....	40%
F. Endowments, paid by 15 annual premiums.....	30%
G. Guaranteed Interest Bonds, more than 10 annual premiums.....	30%
H. Endowments or Guaranteed Interest Bonds paid by 10 annual premiums.....	25%

115 B. It is agreed that in addition to the compensation specified in subdivision "A" hereof, subject to all the conditions and restrictions of said subdivision, said party of the first part will allow said party of the second part an additional first-year commission on policies procured on plans of insurance designated, for amounts of \$2,000 or over, as follows:

On policies of \$2,000, the said extra commission to be.....	5%
On policies of \$3,000, the said extra commission to be.....	10%
On policies of \$4,000, the said extra commission to be.....	15%
On policies of \$5,000 or over, the said extra commission to be.....	20%

C. It is agreed that if the total volume of new insurance written and examined during any twelve calendar months of the continuance of this agreement ending on the ____ day of ____, upon which policies are issued, delivered, and upon which one full year's premiums are duly paid to and received by said party of the first part in cash in due course, during such twelve months, or within sixty days thereafter (policies upon which less than one year's premiums are duly paid as above to count pro rata), amounts to \$____ or more, said

party of the second part shall be entitled to a commission on such premiums of the business so secured during such twelve months period, upon forms of policies designated in subdivision "A," of Section 20th herein, subject to all the conditions and restrictions of said subdivision, as shall renew for the second year of insurance, subject to all the terms and conditions of this agreement, as follows:

If \$— is secured as above, the commission to be 5% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions.

If \$— is secured as above, the commission to be 10% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$— is secured as above, the commission to be 15% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$— is secured as above, the commission to be 20% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

D. On all forms of insurance and all ages not included in subdivision "A" hereof, the compensation shall be such a commission as the said first party shall allow said second party in each specific case.

21st. It is agreed that this agreement shall take effect on the — day of — 1—, if duly signed by said party of the second part, and in facsimile by the President, a Vice President of Second Vice President of said party of the first part, and is further countersigned, on behalf of said party of the first part, by its Contract Registrar at the Home Office of said party of the first part, and by one of its Agency Directors or Managers.

In witness whereof, the parties to this agreement have hereby subscribed the same and affixed their seals the day and year first above written.

NEW YORK LIFE INSURANCE COMPANY.

By THOS. A. BUCKNER, *Vice-President*, [SEAL.]

_____, [SEAL.]

Countersigned by

Contract Registrar.

McCall's Exhibit L.

(Signed)

CHAS. L. BURR,

Notary Public, New York Co., N. Y. [SEAL.]

NEW YORK, *June 26th 1907.*

118 Pursuant to adjournment had on yesterday the further taking of said depositions was continued as follows:

JOHN J. MAHONEY, of lawful age, being by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth in answer to the following interrogatories, deposes and says as follows.

First interrogatory: Please state your name, age, place of residence and occupation?

Answer to first interrogatory: My name is John J. Mahoney, my age is thirty six; my¹ place of residence is in New York City in the State of New York, and by occupation I am Chief Clerk in the Note Division of the Comptroller's Department of the New York Life Insurance Company, the complainant.

Second interrogatory: How long have you been occupied in the position which you say you hold?

Answer to second interrogatory: For more than ten years last past.

Third interrogatory: What are, and during all the time of your employment with the complainant in the position you say you now hold, have continuously been your duties?

Answer to third interrogatory: The Note Division in the Comptroller's Department of the complainant is a division existing at the Home Office of the company in the Comptroller's Department there, the duties of which are to pass upon applications for premium

lien notes, and to determine whether or not the company
119 will accept from a policyholder a premium lien note, and if it is willing to accept such note to make the same out, cause

it to be executed, to accept delivery of it after it has been executed by the policyholder as required by my division provided all the company's requirements have been complied with, to take and retain custody and possession thereof and to cause premium payment to be entered upon the company's books to the extent that it has been paid by the receipt of such premium lien note, to calculate and collect the interest on such note as it becomes due, to see that the amount of the note is deducted from any benefit that becomes payable under the policy or to receive cash in settlement of the note if it is settled and to return it to the maker if paid, and generally to transact all the company's business in respect to notes or bills receivable or in which the company has any interest, and as Chief Clerk in the Note Division in the Comptroller's Department of the complainant it is and for more than ten years last past has been my duty to manage the division and to see that the duties of the Note Division are fully performed.

Fourth interrogatory: You may state whether or not the complainant has ever taken, owned or been interested in within the State of Louisiana or in connection with its business in said State or otherwise any bills receivable for money loaned on interest or advanced for goods sold or bills receivable taken for any purpose

or promissory notes, and if so, you may state to what extent, giving the nature and character thereof.

Answer to fourth interrogatory: No, it never has, except it has
120 at times taken and owned in connection with premium settlements on policies on the lives of residents of Louisiana, but never within the State a form of contract which the company calls a premium lien note, the same being one of the company's customary forms as follows, to-wit:

(Here follows fac-simile of Premium Lien Note.)

§

PREMIUM LIEN

the New-York Life Insurance Company, at the
the sum of
with interest in advance at the rate of five per cent. per an
on Policy No. *issued by said Company on the*

It is understood and agreed:

1. That this note may be renewed, if the interest thereon and subsequent premiums on said policy are **due**
2. That if any premium on said policy, or interest on this note, is not paid when due, this note shall **the**
of any kind, be paid by deducting the amount due thereon from the sum which by the terms **the**
of premium or interest when due, the balance only of said sum, if any, to be available for the **pa**
3. That in the settlement of any claim or any benefit under said policy before this obligation shall have b **e b**
payable by said Company.

Signature of the person whose life is insured.

Signature of the person or persons for whose
benefit the Insurance is effected.

NOTE.

190

after date I promise to pay to the order of
office of said Company in the City of New York,
Dollars,
annum (for value received), being for premium due
the life of

duly paid.

thereupon immediately become due and payable, with interest, and shall, without notice
of said policy is applicable to the purchase of insurance in the event of non-payment
purchase of insurance under and pursuant to the non-forfeiture provision of said policy.
e been fully paid the amount of this note shall be deducted from the amount otherwise

Fifth interrogatory. You may state whether or not the circumstances under which the complainant has taken, received, owned or acquired an interest in any such notes or bills receivable, and the methods of negotiating, making and completing the transaction, and the complainant's system and method of taking, keeping, collecting and dealing therewith have always been the same?

Answer to fifth interrogatory: Yes, in substance and effect.

Sixth interrogatory: You may state fully when and under what circumstances the complainant has accepted such notes or bills receivable what its method has been in negotiating, making
121 and completing the transaction and describe where and how it has at all times taken, kept, collected and dealt therewith?

Answer to sixth interrogatory: The complainant has never taken a premium lien note except from a policyholder in settlement in whole or in part of a renewal premium, nor has it ever taken such note except in settlement in whole or in part of a renewal premium on a policy upon which enough premiums had theretofore been paid in cash to create a reserve on the policy equal to or greater than the amount of the premium lien note. Under certain forms of policies and where the policy had acquired by payment of premiums in cash a reserve equal to or greater than the note, the company has sometimes accepted from the policyholder a premium lien note in settlement in whole or in part of a premium when the policyholder could not or would not pay the premium in cash.

The company's method of negotiating, making and completing a premium lien note transaction has always been as follows:—A policyholder who desired to settle a premium in whole or in part by giving a premium lien note has always made application for that purpose to the complainant at its Home Office in the City of New York either in person at the Home Office or directly through the mails or by way of the company's local office. Such application whenever it is received at the Home Office has always been transmitted to the Note Division in the Comptroller's Department where it is our duty to consider and we always have considered such
122 applications, and either accepted or declined the same. In acting on such application we have always considered the

form of the policyholder's policy contract, the number of premiums that have been paid in cash, and ascertained and considered the reserve value of the policy, and if in view of all these things we were satisfied that the company could safely accept a premium lien note in settlement in whole or in part of the premium, and in all other respects the transaction was such that the company deemed it desirable to accept the premium lien note, we then in my division filled in the company's customary form for premium lien note with the dates, amount and other data in the blanks left in the form for that purpose in such manner and form as would be satisfactory to the company and after so making out the form of contract we either delivered it to the applicant in person or transmitted it to him directly through the mails or by way of the company's local branch office with instructions as to the names to be signed to the note, the company's rule in such cases being to require the note to be signed by every person appearing by the com-

pany's records to have an interest in the policy contract and also with the further requirements that the makers remit to the company interest thereon in advance according to the rate called for by the note to the next succeeding anniversary of the policy. After the policyholder has received the form for the premium lien note and signed it he then returns it to the Home Office either in person or directly through the mails or by way of the company's local office, where it is again received in my division, there examined for the purpose of seeing if it was signed satisfactorily and if the interest in advance as required was also received, and if on

123 examination all the company's requirements were found to be fully complied with, and interest in advance sent in with the note, then we there accepted the note, endorsed on it the interest payment, and the premium was marked in the Comptroller's Department on the Home Office books as settled to the extent that the note covered the premium, the balance of the premium of course having been received in cash if the note was only for a part of the premium. If, however, on considering the application in the Note Division it was ascertained that the policyholder's policy was one in respect to which the company did not care to accept a premium lien note, or the cash premiums had been insufficient to create the required reserve, or if the risk was believed to be impaired, or if, for any other reason, we concluded that it would not be advisable to accept a premium lien note, we there and then declined the application. These applications we have very frequently declined, and on certain forms of policies we do not accept them at all.

Whenever we have received in the Note Division a premium lien note on the company's customary form properly executed, together with the interest in advance as required, and the case was one where the company would be willing to accept such a note and did there accept it, then the interest paid in advance as required is endorsed on the note, the note is filed away in the Note Division and is thereafter always retained there, nor does it ever again go out of my division unless the cash for the same is first received at the Home Office or payment thereof has been made at the Home Office in some other way such as by dividends accrued to the policyholder,

124 deduction from surrender value, of a purchased or paid-up policy, deduction from a death claim or from a matured endowment or been satisfied by deducting the same from the reserve on a lapsed policy, or from other benefit payable under the policy. Sometimes in certain of these cases after the premium lien note has been paid the company mails it to the maker or other person. In many cases it merely marks it on its own records as canceled and thereafter retains possession of it in the Note Division. In other cases it sends it to the branch office for return to the maker.

Seventh interrogatory. You may state how long the complainant has pursued the course described in your answer to the last question in respect to such notes or bills receivable?

Answer to seventh interrogatory. Ever since I have been Chief Clerk in the Note Division of the Comptroller's Department, and long before I came into that position.

Eighth interrogatory. You may state whether or not the complainant at any time during the year 1906 owned or had any interest in any notes, or bills receivable in or in connection with its business, in the State of Louisiana, except those negotiated, made, received, taken, accepted, collected and dealt in in the manner you have described in your answer to Sixth Interrogatory?

Answer to eighth interrogatory. It did not, except a form of contract known to the company as its blue note form, which, however, was not a note in the sense in which the word is commonly used in business.

Ninth interrogatory. You may state whether or not the
125 complainant has ever resorted to the courts of Louisiana or any other jurisdiction for the collection of the notes or bills receivable you have described?

Answer to ninth interrogatory. It has not.

Tenth interrogatory. In accepting such notes on what does the company place its reliance for their final payment?

Answer to tenth interrogatory. It relies for their final payment solely upon the reserve value of the policy which of course is in the company's own possession and control at its Home Office in the City of New York. The financial responsibility of the maker thereof is never an element considered by the company in determining whether or not we will accept such note.

Eleventh interrogatory. You may state whether or not the company has ever demanded payment of any of such notes?

Answer to eleventh interrogatory. It never has. It never accepts such a note unless it has in its own possession money held for the ultimate benefit of the policy holder with which to pay it.

Twelfth interrogatory. You may state what the company's practice has always been in respect to the renewal of these notes and the satisfaction of the debt evidenced by them?

Answer to twelfth interrogatory. If the company has taken such a note and the premiums are paid when due and the interest on the note is paid — which is always made payable by the terms of the note
on the due date of the premium, it has always been the prac-

126 tice of the Company to enter in my department the payment of interest, hold the note and treat it as continued without any action as to its renewal until the policy has lapsed or become a claim by death or maturity, or until other benefit has become payable under the terms of the policy and then it satisfied the note out of the funds in its hands accumulated or payable on account of the policy. If, however, default is made in payment of interest on the note it has always been the company's practice to, and it does, thereupon satisfy the debt evidenced by the note at the Home Office of the company by deducting the amount of it from the value of the policy.

Thirteenth interrogatory. You may state how the company collects and always has collected the interest on these notes?

Answer to thirteenth interrogatory. The amount of interest due on the anniversary of the policy is made a part of the premium notice that the company sends out before the premium becomes due and the

interest is collected with the premium. Both the premium and the interest are payable at the Home Office in New York City, but ordinarily the company in the premium notice authorizes the policyholder to pay either directly to the Home Office or at the company's local office.

Fourteenth interrogatory. You may state whether or not any interest payment is ever endorsed on the premium lien note? If so, when, where and by whom?

Answer to fourteenth interrogatory. If when we receive the
127 note in my Division we find on examination of it that its execution is satisfactory to the Company and the proper amount of interest accompanies it, that first interest payment is endorsed on the note as soon as it is accepted in my Division. The endorsement is made in my Division by myself or some clerk under my direction, and is regarded by us as completing the note transaction. Subsequent interest payments are not endorsed on the note but are endorsed on the company's premium card in the Comptroller's Department.

Fifteenth interrogatory. You may state whether or not any person within the State of Louisiana has ever been authorized by the company to accept or has ever accepted for it a premium lien note?

Answer to fifteenth interrogatory. No, no person has. This has always been done in the Note Division of the Comptroller's Department ever since I came into the Department and not elsewhere.

Sixteenth interrogatory. You may state, if you can, the amount of any such notes given by Louisiana policyholders within the jurisdiction of the New Orleans Office and outstanding on January 1, 1906?

Answer to sixteenth interrogatory. It is a practical impossibility to give the exact amount of premium lien notes outstanding on January 1, 1906. The reason for this is that the company's methods of keeping its premium lien note files is by filing them in numerical order without any reference to the locality of the maker of the note.

I am able, however, to give the amount of premium lien notes
128 taken in the territory tributary to the New Orleans Branch Office during the year 1905. The face amount of these was \$12,368.68. The amount of premium lien notes paid during the year 1905 by policyholders residing in the territory tributary to the New Orleans Branch Office was \$5,914.25, leaving a balance of notes received over notes paid for the year 1905 on January 1, 1906, of \$6,454.43. The notes taken in the year 1905 probably exceeded those taken in any previous year because during that year the company's insurance in force was larger than in any preceding year.

Answers to Cross Interrogatories Propounded to John J. Mahoney.

Cross-interrogatory No. 1. In answering interrogatory No. 4 please confine yourself to facts, and eliminate from your answer any conclusions of law. Please state in detail the entire manner of doing business in this State by your company, particularly with reference to the loan feature of your business, giving with specific particularity

every step from the time a policyholder applies for a loan up to the time that such loan is liquidated. Please be careful to state the channel through which each step is taken, how the amount of the loan is paid by you, by whom the annual interest is collected, and all the other incidents of your business in this connection.

Answer to cross-interrogatory No. 1. I have not and never
129 had had anything to do with any part of the loan business of the company except to pass on applications for premium lien notes, and to perform the duties of my employment in the Note Division of the Comptroller's Department as stated in my answer to the Third Interrogatory. My answers to the Third and Fourth Interrogatories I think completely answer this cross interrogatory.

If a policyholder applies for the privilege of settling a premium or part of it by giving a premium lien note, the application comes into my Division, and it is my duty to, and I do there determine whether or not the company will accept the application. If we conclude to accept it we make out the note on the company's customary form and forward it for signature of the policyholder either directly to the policyholder through the mails or through the mails to the policyholder by way of our New Orleans local office. If it is satisfactory in form to the policyholder and he executes it, it is then returned to my division where we examine it and if we find it has been properly executed, and the proper interest has been paid, we then accept it, endorse the interest payment on it, and the premium is marked on the books in the comptroller's Department as settled. The local office in New Orleans has never had authority to take a premium lien note. My division in the Home Office is the sole authority on this subject. If the local office in New Orleans performs any function in any instances in respect to a premium lien note it is done under specific directions, and never involves the exercise of any discretion in the employees of that office, nor have employees
of that office ever been authorized to nor have they ever ac-
130 cepted any such note.

If a premium lien note is paid it is either paid directly to the Home Office, or the money is transmitted to the Home Office through the company's local office. It is never accepted as payment until received in or reported to my division and the account there examined, and the amount due determined. If the note is paid the note is either returned to the maker of it or cancelled and retained in my division.

The annual interest on these loans is collected with the annual premium. It is the company's custom to send to each policyholder everywhere at least fifteen and not more than forty-five days before the maturity of the premium a notice stating the amount of the premium, etc. and if a premium lien note has been taken at any time this notice also contains a statement of the annual interest. The interest is paid with the premium either by remitting directly to the Home Office, or by paying to some local office where the notice of the due date of the premium authorizes payment to be made. That is, these notices state that the premium and interest are payable at the Home Office but may be paid at the local office in the vicinity, naming it.

No other incidents now occur to me in connection with this business that have not been covered by my other answers. I believe I have fully covered the subject.

Cross-interrogatory No. 2. In answering Interrogatory No. 5, with respect to the years 1905 and 1906, please state where your head office in the State of Louisiana was located and what relations existed between your State Agent and his Sub-Agents, and whether
131 or not business emanating from other points outside of the City of New Orleans in Louisiana was transacted through the main office in the City of New Orleans, if you should testify that said main office was in the city.

Answer to cross-interrogatory No. 2. The company had no head office in the State of Louisiana in either of these years. It had two offices in the State, one at Shreveport, and one at New Orleans, but neither of these was the head office. Each office was of like character to the other in respect to the territory tributary to it. Neither was dominant over the other, nor was either of them a head office. It also may have had one or two other offices within the state during 1905, which had to do solely with the acquisition of new business. The company did not have any State Agent in Louisiana in either of these years. It has not had State Agents anywhere for many years, nor did it have any agent in either of these years who had sub-agents. All persons in the company's employ or doing business for it have contracts directly with the company.

Business emanating from other points outside of the city of New Orleans in certain localities tributary to the city of New Orleans was frequently, indeed usually, transmitted to the Home Office through the company's New Orleans local office. In other words the functions of the New Orleans local office were performed with respect to policyholders outside of the city as well as in the city. I have examined the deposition of John C. McCall and find his answer to the Ninth Direct Interrogatory correctly explains the territory within the sphere of the operations of the New Orleans local
132 office, and which the company treats as tributary to that office.

Cross-interrogatory No. 3. In answering Interrogatory No. 6, be careful to confine yourself to statements of fact, and avoid any conclusions of law.

Answer to cross-interrogatory No. 3. I think my answer to interrogatory sixth contains facts and not conclusions of law.

Cross-interrogatory No. 4. If, in answering the ninth interrogatory, you state that the company has not had recourse to the courts of Louisiana please state how you know such fact.

Answer to cross-interrogatory No. 4. I know these facts because I have as Chief Clerk in the Note Division immediate custody and control of these notes. I know the facts about each and every one of them, and if any litigation had ever occurred in respect thereto it would be in the first instance under my direction if the company was plaintiff, and if the company was defendant I would be consulted about it for a statement of the company's defense. No such litigation could occur without my knowing it, and, besides, there is no reason why there should be litigation, because the company never accepts

such a note unless it has in its own hands funds accumulated on account of the cash premiums paid sufficient always to pay the note.

Cross-interrogatory No. 5. Please state, in answer to the twelfth interrogatory, what feature the State Agent in Louisiana is in the matter of renewals of these loans; and whether or not, by simply paying interest to him, such loan is renewed without the necessity of confirmation of such renewal by the Home Office in New York; and whether or not, upon continued payment of the annual interest, such loan will not be renewed by your company, from year to year, without specific instructions from your Home office to your Agent in Louisiana.

Answer to cross-interrogatory No. 5. As I have above stated the company has not now, and has not for a great many years had any state agent in Louisiana. No agent or representative of the company in Louisiana has nor has he ever had anything whatever to do with the renewal of these premium lien note loans. If the interest called for by the note is received, and the premiums are paid on the policy, then we enter on the premium card the payment of the interest, hold the note, and treat it as continued without any action as to its renewal. No person in Louisiana has the custody of the note. The interest is not payable there, it is payable at the Home Office. No person in Louisiana has ever had authority to receive the interest except where the Comptroller's Department has expressly delegated authority to the cashier there to receive it by so advising the policyholder in each particular case in the notice sent him before its due date. And in such cases the cashier has no authority except to receive and deposit the money. These are all the powers and authority the cashier or anyone else in Louisiana has to act for the company about these notes.

Cross-interrogatory No. 6. In answering Interrogatory No. 13, please state to what extent your State agent in Louisiana is instrumental in such collections.

Answer to cross-interrogatory No. 6. As I have above stated, the company has never had since back in the early 90's, I do not recall the exact year, any State Agent in Louisiana. The interest on these premium lien notes is often remitted to the company's Home Office by the policyholder through the company's New Orleans local office, which is under the jurisdiction of a clerk called "cashier." This, however, is not done except when expressly authorized in each particular case in the notice sent about the maturity of the premium and interest. No person in connection with that office or in New Orleans, has ever had any authority in respect of this interest collection except that when a policyholder chooses to pay it through that office, if authorized in the premium notice to do so, it is the cashier's duty to receive it and deposit it in the company's bank to the credit of the proper account.

Cross-interrogatory No. 7. Please explain what a premium lien note is, and what part it plays in loan transactions with your policyholders.

Answer to cross-interrogatory No. 7. I think I have fully answered

this interrogatory in answer to my interrogatories in chief, especially my answers to the fourth and sixth interrogatories. A copy of the premium lien note form is made a part of my answer to the fourth interrogatory.

Cross-interrogatory No. 8. Please extend the information given by you in answer to Interrogatory No. 16 so as to show the
 135 amount of outstanding loans to policy holders in Louisiana made by your company on each day of the year 1905 and on the first day of January 1906.

Answer to cross-interrogatory No. 8. I cannot answer this question for the reason stated in my answer in Interrogatory No. 16.

Cross-interrogatory No. 9. Please state whether or not it is the custom of your company, or whether it was the practice in 1905 and 1906, to grant policy-holders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Answer to cross-interrogatory No. 9. No, it has never been the company's practice or custom to extend the time within which to pay premiums except in specific instances and in a specific way and in exceptional cases, and then only under the following conditions—

The premium is due and payable on the date stated in the policy, and if not paid on that date, or within the period of grace, if the policy provides for grace in the payment of premium, it always has been the company's custom and practice to lapse the policy for the non-payment of the premium and not thereafter to accept the premium except upon receiving from the policyholder *statisfactory* evidence of insurability; but in certain cases *if*
 136 the company is satisfied that a risk is not impaired, and

if the policyholder desires to pay the premium but is unable to do so for want of funds, then on or before the due date of the premium, or before the expiration of the days of grace for paying it, if the policy provides for grace in the payment of premiums, the company will in such cases and only in such cases, usually indulge the insured for the payment of the premium in the manner and upon the terms stated in a written contract always made in such cases, always uniform, and called by the company its blue note contract.

This agreement consists in the immediate payment in cash of not less than 15% of the premium on endowment policies and 25% of the premium on all other forms of policies excepting policies written on the economic plan or *tontine* investment plan, term and renewable term policies, on which forms of policies the company will not give its blue note contract indulgence at all. Upon the receipt of the amount of cash as above stated, and under the terms and conditions and at the time above stated, the company has sometimes accepted this blue note contract made out on its form for that purpose which is as follows,—

(Here follows fac-simile of Blue Note Contract.)

NEW-YORK LIFE INSURANCE

346 & 348 BROADWAY

Received from

in cash and a note for \$ dated the

before after its date, with interest at

without demand or notice, payable at

of in the State

*Said note is received by the New-York Life Insurance
by said Company together with said cash on the following ex*

"THAT although no part of the premium due on the

"Policy No., issued by said Company on the life of ..
"has been paid, the insurance thereunder shall be continued in force until ..
"before the date it becomes due such payment, together with said cash, will ..
"all rights under said policy shall thereupon be the same as if said premium ..
"the day it becomes due, it shall thereupon automatically cease to be a claim ..
"compensation for the rights and privileges hereby granted, and all rights ..
"nor this agreement made; THAT said Company has duly given every ..
"premium, and in further compensation for the rights and privileges hereby ..
"every other notice in respect to said premium or this note, it being well ..
"this agreement if any notice of any kind were required as a condition to

1770. May, 1907.

Pol. No.

ON OR BEFORE

demand or notice, I promise to pay to the order of the

Dollars

value received,

(Name of City)

This note is accepted by said Company at the request of the maker, together with ..
in cash, on the following express agreement:

THAT although no part of the premium due on the

Policy No., issued by said Company on the life of ..
has been paid, the insurance thereunder shall be continued in force until midnight ..
date it becomes due, such payment, together with said cash, will then be accepted by ..
policy shall thereupon be the same as if said premium had been paid when due; That ..
thereupon automatically cease to be a claim against the maker, and said Company ..
hereby granted, and all rights under said policy shall be the same as if said cash had ..
given every notice required by its rules or by the laws of any State in respect to ..
hereby granted the maker hereof has agreed to waive, and does hereby waive every ..
stood by said maker that said Company would not have accepted this agreement if ..
of all its terms.

(NAME)

(ADDRESS)

\$

1771 Jan., 1905

IRANCE COMPANY,

Y, NEW YORK.

\$

day of 190 , due on or
the rate of five per cent. per annum, without grace, and
in the City
ate of

e Company at the request of the maker and is held
xpress agreement, which forms a part of said note:

day of 190 , under

il midnight of the due date of said note; THAT if this note is paid on or
will then be accepted by said Company as payment of said premium, and
dum had been paid when due; THAT if this note is not paid on or before
aim against the maker, and said Company shall retain said cash as part
s under said policy shall be the same as if said cash had not been paid
notice required by its rules or by the laws of any State in respect to said
ebly granted the maker hereof has agreed to waive, and does hereby waive,
understood by said maker that said Company would not have accepted
o the full enforcement of all its terms."

NEW-YORK LIFE INSURANCE CO.,

By

190

, after date, without grace, and without

NEW-YORK LIFE INSURANCE COMPANY,

s at

(Bank)

with interest at the rate of five per cent. per annum.

Dollars

day of 190 , under

of the due date of said note; THAT if this note is paid on or before the
y said Company as payment of said premium, and all rights under said
HAT if this note is not paid on or before the day it becomes due, it shall
shall retain said cash as part compensation for the rights and privileges
ad not been paid nor this agreement made; THAT said Company has duly
aid premium, and in further compensation for the rights and privileges
other notice in respect to said premium or this note, it being well under-
any notice of any kind were required as a condition to the full enforcement

(NAME)

(ADDRESS)

137 The upper part of the above form, commencing with the words "Received from", when filled out with the data that has been filled in in the blanks in the lower part of the form is signed by the company, and delivered to the policyholder. The lower part is dated with the due date of the premium, and after the words "on or before" is inserted a date never exceeding six months after the due date of the premium, and usually a shorter period, thirty, sixty or ninety days according as the policyholder thinks he will be able to raise the premium, and also according to the amount of cash paid. If the premium is payable quarterly or semi-annually, the time of indulgence stated in this blue note agreement never exceeds three months on a semi-annual, or fifty days on a quarterly premium.

This blue note transaction is exactly what on its face it purports to be. It is taken solely under the terms and conditions above stated, and the company adheres strictly to the terms of the agreement contained in it. Therefore in answer to that part of the Interrogatory which asked me to state "whether or not, for such referred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums", my answer is "no"; for while in this blue note agreement the maker says "I promise to pay" the blue note contract is not what I understand to be a promissory note, for there is no time at which the company could base any legal claim under it for the amount called for in it. The note itself says "that if this note is paid on or before the date it becomes due, such payment,

138 together with said cash, will then be accepted by said company as payment of said premium, and all rights under said policy shall thereupon be the same as if said premium had been paid when due; That if this note is not paid on or before the day it becomes due, it shall thereupon automatically cease to be a claim against the maker." The note is therefore never the evidence of a legal obligation, it is merely as it purports on its face to be a plan for the accommodation of the company's policyholders extended to them under the conditions herein stated to assist them in paying their premiums, and at the same time to leave the company as nearly as might be where it would have been if the agreement contained in the blue note had not been made. The maker of the note is under no greater legal liability for the payment of the premium after giving this blue note than he was before.

The amount of these held by the company varies of course from day to day and is extremely difficult of exact ascertainment, but the average thereof for the New Orleans Office was in 1906 about \$10,000.

The blue note has never been received in lieu of cash payment; it has never been received except under the circumstances above stated, and precisely upon the terms stated in the note itself.

This blue note agreement in 1905 and 1906 was also sometimes made with a policyholder who, after the lapse of his policy made application to the company for a reinstatement of it, and furnished the required and satisfactory evidence of insurability.

Down to about the year 1902 the company sometimes in special cases would give to a policyholder who asked for it an extension of time for paying his premiums of from ten to thirty days, without any conditions. This practice, however, was abandoned in or about the year 1902, and has not been followed since that time.

Cross-interrogatory No. 10. Please state specifically how and when you obtained sufficient information to answer *to* foregoing interrogatories and cross-interrogatories.

Answer to cross-interrogatory No. 10. I obtained the information upon which I based my answers to the foregoing interrogatories and cross interrogatories by my personal knowledge and experience in the company's employ at its Home Office, where I have been employed for twenty years, the last fourteen of which have been in the Note Division of the Comptroller's Department. I have been in that Division ever since it was created.

(Signed)

JOHN J. MAHONEY.

Subscribed in my presence and sworn to before me this 26th day of June, 1907.

(Signed)

CHAS. L. BURR,

[SEAL.]

Notary Public, New York Co., N. Y.

The hour of four o'clock having arrived the further taking of these depositions was continued until to-morrow morning at ten o'clock at the same place.

(Signed)

CHAS. L. BURR,

[SEAL.]

Notary Public, New York Co., N. Y.

140

NEW YORK, June 27th, 1907.

Pursuant to the adjournment had on yesterday the further taking of said depositions was continued as follows:

GEORGE C. NEWTON, of lawful age, being by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth in answer to the following interrogatories, deposes and says as follows:

First interrogatory. Please state your name, age, place of residence and occupation.

Answer to first interrogatory. My name is George C. Newton, my age is forty-one, my place of residence is in New Brighton in the State of New York, and by occupation I am Superintendent of the Division of Policy Loans of the New York Life Insurance Company, the complainant.

Second interrogatory. How long have you been employed in the position you now hold with the complainant?

Answer to second interrogatory. For more than seven years last past.

Third interrogatory. What was your occupation before your present employment?

Answer to third interrogatory. Prior to the time of my employment as Superintendent of the complainant's Division of Policy Loans I was in charge of the making of policy loans for the complainant and had been ever since the year 1893. From the year 1893 down to the year 1900 the policy loan business of the complainant was transacted in the complainant's Department of Policy

Claims and I was engaged in this work in that Department. 141 In the year 1900 a separate Division of Policy Loans was created and I was made superintendent of that Division and have been engaged as its superintendent in and about the business of that division from that time to the present time.

Fourth interrogatory. What is the division in which you are employed and what are its duties and functions?

Answer to fourth interrogatory. The Division of Policy Loans is a division in the Home Office of the New York Life Insurance Company in New York City which has charge and control of and is engaged in making loans to policyholders of the company on the pledge of their policies as security for the loan. The functions of the division are to receive and consider applications for such loans, to accept or reject them, and if it accepts them to cause the loan contract to be properly executed, and to accept delivery thereof and receive the policy in pledge as security for the repayment of the loan, to pay to the borrower the proceeds of the loan, and to transmit the loan contract and the pledge security to the company's division of Policy Loan Securities when the loan transaction is completed.

Fifth interrogatory. How long have the functions of your division been what in the answer to the last question you have said they now are?

Answer to fifth interrogatory. Ever since March 1, 1906.

Sixth interrogatory. What were the duties and functions of said Division before they became what you say they now are?

142 Answer to sixth interrogatory. From the date of the organization of the division in 1906 down to March 1, 1906, the division of Policy Loans performed the duties and functions which it now performs and in addition thereto the further duties and functions which since March 1, 1906, have been performed by a new division created on that date and known as the division of Policy Loan Securities, which were to receive and retain the custody and control of the policy loan contracts and pledged policies, to keep the records of the loans and the current history thereof, to look after the collection of policy loans, to foreclose the loans in the event of default in payment of premium on the policy or interest on the loan, to see that the loan was deducted from benefits that became payable under the policy, and the like.

Seventh interrogatory. Prior to the creating of the division of Policy Loans in 1900 where and how were policy loans negotiated, made and the company's business in respect thereto transacted?

Answer to seventh interrogatory. Ever since shortly after the inception of making loans on policies down to the time of creating in 1900 the Division of Policy Loans all the company's business in connection with policy loans was transacted in the department of

Policy Claims at the Home Office of the corporation. For a few months after the company first commenced to make loans on policies, which was in 1892, its business in connection therewith was transacted in the Comptroller's Department. In about six or

143 seven months the business was transferred from the comptroller's department to the Policy Claims Department, and from there in 1900 to the Division of Policy Loans.

Eighth interrogatory. You may state if you know whether or not the complainant has ever made to policyholders or other persons residing or being within the State of Louisiana any policy loans except those made at the Home Office in one or the other of the departments or divisions therein which you say has had charge of that business?

Answer to eighth interrogatory. No, it has not.

Ninth interrogatory. From your knowledge of the complainant's business, business methods and your duties as an employee of the company are you able to state from your personal knowledge the methods which have always been employed by the complainant in making all its policy loans, and to give the procedure which it has always followed in policy loan transactions? If so, you may state fully.

Answer to ninth interrogatory. I am. The methods employed by the company in making policy loans, and the procedure followed by it is practically the same now as it always has been except as the divisions or departments of the Home Office of the company handling one feature or other of the policy loan business have been changed at the times, and in the way I have already described.

The complainant commenced to make loans on policies
144 in 1892 and has made loans of that kind from 1892 until the present time. Most of the company's policies ever since 1892 have contained an agreement under which the policyholder may obtain from the company a cash loan on the sole security of the policy on written request at any time after the policy has been in force a specified number of years if premiums have been paid to the anniversary of the insurance next succeeding the date when the loan might be obtained, the insured to pledge the policy and its accumulations as collateral security for the loan in accordance with the terms of the company's form of loan agreement, the policy in most cases stating the amount of loan available at any given time and requiring that the loan should bear interest at the rate of five per cent. per annum, payable in advance. The form of the policy in respect to loans has changed from time to time to some extent, and different forms of policies would be in some measure differently written from others on this subject, but the above is in substance and effect their requirements generally. The same is true of the company's form of loan agreement. The company's forms of loan agreements now and for several years past including 1905 and 1906 in use are as follows:

Policy Loan Agreement.

Whereas, the undersigned have this day duly received from the New-York Life Insurance Company — Dollars (\$—), in cash, as a loan upon Policy No. —, issued by said Company on the life of — — —. Therefore,

In Consideration of the premises, the undersigned hereby agree as follows:

1. To pay said Company interest on said loan at the rate of five per cent. per annum, payable in advance from this date to the next anniversary of said policy, and annually in advance on said anniversary and thereafter.

2. To pledge, and do hereby pledge, said policy as collateral security for the payment of said loan and interest, and herewith deposit said policy with said Company at its Home Office.

3. To pay said Company said sum when due with interest, reserving, however, the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

4. That said loan shall become due and payable—

(a) Either if any premium on said policy or any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by said Company by deducting the amount due on said loan from the reserve on said policy computed according to the American Experience Table of Mortality and interest at the rate of four and one-half per cent. per annum; and if after said deductions there is any balance of said reserve as so computed, said balance shall be taken as a single premium of life insurance at the published rates of said Company at the time said policy was issued, and shall be applied to purchase upon the life of the insured under said policy, at the age of said insured on said due date, paid-up insurance for such amount as said balance will buy, payable under the same conditions as the original policy, but without premium return, participation in profits, or further payment of premiums;

(b) Or, (1) on the maturity of the policy as a death claim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the completion of any Tontine or Accumulation dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

5. That the application for said loan was made to said Company at its Home Office in the City of New York, was accepted, the money paid by it, and this Agreement made and delivered there; that said principal and interest are payable at said Home Office, and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said Company.

In witness whereof, the said parties hereto have hereunto set their hands and affixed their seals this — day of —, 190—.

—, [L. S.]
 —, [L. S.]
 —, [L. S.]

Signed and sealed in the presence of

2808 Prior to 99-135.

[On right margin:] Forwarded from — Branch Office, Prem paid in full to —, —, 190—, B. N., \$ —, —, Cashier.

[Endorsed:] Loan Agreement. New York Life Insurance Company.

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Policy Loan Agreement.

Pursuant to the provisions of Policy No. —, issued by the New-York Life Insurance Company on the life of —, the undersigned have this day obtained a cash loan from said Company of the sum of — Dollars (\$ —), the receipt of which is hereby acknowledged, conditioned upon pledging as collateral said policy with said Company as sole security for said loan and giving assent to the terms of this Policy Loan Agreement; therefore,

In Consideration of the premises, the undersigned hereby agree as follows:

1. To pay said Company interest on said loan at the rate of five per cent. per annum, payable in advance from this date to the next anniversary of said policy, and annually in advance on said anniversary and thereafter.

2. To pledge, and do hereby pledge, said policy as sole security for the payment of said loan and interest, and herewith deposit said policy with said Company at its Home Office.

3. To pay said Company said sum when due with interest, reserving, however, the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

4. That said loan shall become due and payable—

(a) Either if any premium on said Policy or any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by satisfying said loan in the manner provided in said policy;

(b) Or, (1) on the maturity of the policy as a deathclaim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the selection of a discontinuing option at the end of any dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

5. That the application for said loan was made to said Company

at its Home Office in the City of New York, was accepted, the money paid by it, and this agreement made and delivered there; that said principal and interest are payable at said Home Office, and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said Company.

In Witness Whereof, the said parties hereto have hereunto set their hands and affixed their seals this — day of —, 190—.

_____, [L. S.]
 _____, [L. S.]
 _____, [L. S.]

Signed and sealed in presence of

_____.

2808-A. Non-for, Acc, Jan., 1906.

[On right margin:] Forwarded from — Branch Office, Prem.
 paid in full to —, 190—. B. N., \$—, —, Cashier.

[Endorsed:] Loan Agreement. New York Life Insurance Company.

147

Policy Loan Agreement.

Whereas, the undersigned have this day duly received from the New-York Life Insurance Company — Dollars (\$—), in cash, as a loan upon Policy No. —, issued by said Company on the life of —. Therefore,

In Consideration of the premises, the undersigned hereby agree as follows:

1. To pay said Company interest on said loan at the rate of five per cent. per annum, payable in advance from this date to the next anniversary of said policy, and annually in advance on said anniversary and thereafter.

2. To pledge, and do hereby pledge, said policy as collateral security for the payment of said loan and interest, and herewith deposit said policy with said Company at its Home Office.

3. To pay said Company said sum when due with interest, reserving, however, the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

4. That said loan shall become due and payable —

(a) Either if any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by said Company by deducting the amount due on said loan from the reserve on said policy computed according to the American Experience Table of Mortality and interest at the rate of four and one half per cent. per annum, and if after said deduction there is any balance of said reserve as so computed, said balance shall be taken as a single premium of life insurance at the

published rates of said Company at the time said policy was issued, and shall be applied to purchase upon the life of the insured under said policy, at the age of said insured on said due date, paid-up insurance for such amount as said balance will buy, payable under the same conditions as the original policy, but without premium return, participation in profits, or further payment of premiums;

(b) Or, (1) on the maturity of the policy as a death claim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the completion of any Tontine or Accumulation dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

5. That the application for said loan was made to said Company at its Home Office in the City of New York, was accepted, the money paid by it, and this Agreement made and delivered there; that said principal and interest are payable at said Home Office, and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said Company.

In Witness Whereof, the said parties hereto have hereunto set their hands and affixed their seals this — day of — 190—.

_____, [L. S.]
 _____, [L. S.]
 _____, [L. S.]

Signed and sealed in presence of

_____.

2808-B. Feb., 1905. Loan on Paid-up.

[On right margin:] Forwarded from — Branch Office, Premium paid in full to —, —, 190—, B. N., \$—, —, Cashier.

[Endorsed:] Loan Agreement. New York Life Insurance Company.

148 One or another of these three forms is used according to the special form of policy which is offered in pledge as security for the loan.

Some policy forms show with certainty on their face the amount of loan available at any time, so that a policyholder of ordinary intelligence is able to know just what loan he can at any time get; other policies are not so clear on this subject and indeed in some forms of policies the amount of loan available cannot be ascertained except by consulting the Actuary's Department of the company. If a policyholder is in any doubt from the face of his policy as to the amount of loan available at any given time the company requires him to make written application to the company for a statement as to the amount of loan that will be granted, this statement to be made on a form as follows:—

— 190 —

New-York Life Insurance Company, 346 & 348 Broadway, New York.

Re Policy No. —.

Application is hereby made for a Cash Loan on the security of the above policy issued by the New-York Life Insurance Company on the life of ——— subject to the terms of said Company's Loan Agreement.

Please state what amount of loan will be granted, if any.

Forwarded from — Branch Office, — 190 —

—, *Cashier.*

2120-C. May, 1900.

149 The foregoing form is not invariably required. If a policyholder writes a letter to the Home Office asking the amount of loan available, the letter will be treated as a formal application for information and the information will be given in answer. Whether, however, the application is made on the above form or whether by letter it comes to my division in the Home Office. It is then the duty of my division of the Home Office and we do examine the policy form and ascertain either from it or from the policy form and the Actuary's Department in the Home Office the amount of loan available at that time on the policy, and this information we then give to the policy holder, either by mailing it to him directly from the Home Office or transmitting it to him through the branch office of the company in his vicinity. In answer to the policyholder's inquiry by letter or on the company's above customary form we send a letter from my division on the company's customary form, which is as follows,—

1725-A. June, 1903.

New-York Life Insurance Company, 346 & 348 Broadway, New York. Darwin P. Kingsley, President.

Secretaries' Department—Premium Collection Division.

John C. McCall, Secretary.

Seymour M. Ballard, Secretary.

F. M. Johnson, Premium Cashier

Re Loan on Policy No. —.

DEAR SIR: Acknowledging due receipt of your esteemed favor we reply that a maximum Cash Loan of \$ — will be made, subject to the regular rules and to the following special requirements.

Yours truly,

F. M. JOHNSON,

Premium Cashier.

By ———.

150 If in response to the information contained in the letter written on the form last above set out the policyholder signifies his desire for the loan we then in my division make up the policy loan agreement in duplicate, ready for signature, transmit it to the policyholder, accompanying the same with a letter on the Company's customary form for that purpose which is as follows,—

1725. Oct., 1900.

New-York Life Insurance Company, 346 & 348 Broadway, New York. Darwin P. Kingsley, President.

Secretaries' Department—Premium Collection Division.

John C. McCall, Secretary.

Seymour M. Ballard, Secretary.

F. M. Johnson, Premium Cashier

Re Policy No. —.

DEAR SIR: Acknowledging due receipt of your esteemed favor of — please find enclosed Policy Loan Agreement in duplicate, to be signed, witnessed, and returned, together with the policy.

Yours truly,

F. M. JOHNSON,

Premium Cashier.

By — — —.

(Enc.)

151 Our branch offices in every locality are furnished with a supply of the Company's customary form of policy loan agreement, and in some cases the branch office will fill out the blanks in the company's loan agreement form and give it to the policyholder for execution, and it will afterwards be transmitted to my division in the Home Office for consideration and acceptance or rejection. The branch office, however, when acting in this capacity has no authority to and never does exercise any discretion, or approve or accept any policy loans; whatever such office does, if anything, it does and can do merely in a clerical capacity and as a matter of convenience to the borrower and to save time. The whole matter of the loan, the amount to be loaned, the acceptance of the application, the approval of the papers, the receipt and acceptance thereof and the payment of the money, is and always has been conducted at the Home Office and never anywhere else, with the exception of loans that have been made at the company's office of Issue in Chicago and in certain cases in some branch offices of unusual importance, but never in any instance anywhere in the State of Louisiana has any loan been made. All the Louisiana policy loan business is and always has been conducted at the Home Office in the way I have stated.

When the policyholder executes the loan agreement in duplicate

he then transmits the same, together with his policy, either directly or through a branch office, to the Home office, where it comes into my division. It is then our duty to and we do examine the papers to see if the loan agreement has been executed by all persons who appear by the company's records to have an interest in the policy. If they have not been properly executed we return the loan agreement with instructions about proper execution, retaining the policy here until the properly executed papers are returned to us, and when all papers are finally completed to our satisfaction in my division we then draw a warrant on the Treasurer in the Home Office for the amount of the loan, who draws and transmits to my division a check for the amount of the loan payable to the order of the borrower, the check being always drawn against the company's balance in bank in the City of New York, except loans to Canadian policyholders and California policyholders, where, as to Canadian policyholders the check is drawn on the Bank of Montreal, and as to California policyholders, it is drawn on the Wells Fargo and Nevada National Bank of San Francisco; but all Louisiana policy loans are and always have been paid by check drawn on the company's bank account in the city of New York where the checks have always been paid. My division forwards this check on the company's bank account in New York city to the borrower either directly through the mails or by way of the company's branch office in the borrower's vicinity. This completes the loan transaction and is the way all loans have always been made to policyholders in Louisiana.

Before the company created the division of Policy Loan Securities, March 1, 1906, we kept all loan papers in my division, filing the policies and loan agreements in serial file numbers in a safe kept for that purpose.

As soon as we concluded a loan we always transmit to the Comptroller's department in the Home Office a card showing to that department the amount of interest to be collected annually on account of the loan. Before the Division of Policy Loan Securities was created, March 1, 1906, which since its creation has had charge of loan foreclosures by the same process and the use of the same forms as obtained in my division before March 1, 1906, my division retained control and management of the loan transaction after it was completed. If interest on the loan was not paid when due or the policy lapsed for the nonpayment of premium it was the duty of my division to and we did foreclose the loan in the manner described in the loan agreement and sent a letter to the policyholder advising him of the foreclosure, this information going by mail to the policyholder in a letter on the company's customary form for that purpose, of which there were five forms as follows:

New York Life Insurance Company, 343 & 348 Broadway, New
York, Alexander E. Orr, President.

Secretaries' Department—Division of Policy Loan Securities.

John C. McCall, Secretary. Seymour M. Ballard, Secretary.

Re Policy No. —.

DEAR SIR: By a Loan Agreement executed on the — day of —, 190—, the above policy on the life of — was pledged to and deposited with the New York Life Insurance Company as collateral security for a cash loan of \$—.

The premium and interest due on said policy on the — day of —, 190—, not having been paid, the principal of said loan became due, and settlement of said indebtedness has been made in accordance with the terms of the policy, which is returned enclosed, endorsed for — years and — months Continued Insurance.

Yours truly,

JOHN C. McCALL, *Secretary.*

By — — —.

(Encl.)

154 2812-B. April, 1904.

New-York Life Insurance Company, 346 & 348 Broadway, New
York, Alexander E. Orr, President.

Secretaries' Department—Division of Policy Loan Securities.

John C. McCall, Secretary. Seymour M. Ballard, Secretary.

Re Policy No. —.

DEAR SIR: By a Loan Agreement executed on the — day of —, 190—, the above policy on the life of — was pledged to and deposited with the New-York Life Insurance Company as collateral security for a cash loan of \$—.

The premium and interest due on said policy on the — day of —, 190—, not having been paid, the principal of said loan became due, and settlement of said indebtedness was made in accordance with the terms of the policy, the insurance being continued for — years and — months from the date when said premium and interest became due. The period of Continued Insurance having expired, the policy has no further value.

Yours truly,

JOHN C. McCALL, *Secretary.*

By — — —.

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2812-C. April, 1904.

New-York Life Insurance Company, 346 & 348 Broadway, New
York, Darwin P. Kingsley, President.

Secretaries' Department—Division of Policy Loan Securities.

John C. McCall, Secretary. G. C. Smith, Superintendent.
Seymour M. Ballard, Secretary.

Re Policy No. —.

DEAR SIR: By a Loan Agreement executed on the — day of —, 190—, the above policy on the life of — was pledged to and deposited with the New-York Life Insurance Company as collateral security for a cash loan of \$—.

The premium and interest due on said policy on the — day of —, 190—, not having been paid, the principal of said loan became due, and has been settled according to the terms of the policy, and the policy has no further value.

Yours truly,

JOHN C. MCCALL, *Secretary.*

By ———.

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2812-D. April, 1904.

New-York Life Insurance Company, 346 & 348 Broadway, New
York, John A. McCall, President.

Secretaries' Department—Division of Policy Loans.

John C. McCall, Secretary. Seymour M. Ballard, Secretary.

Re Policy No. —.

DEAR SIR: By a Loan Agreement executed on the — day of —, 190—, the above policy on the life of — was pledged to and deposited with the New-York Life Insurance Company as collateral security for a cash loan of \$—.

The premium and interest due on said policy on the — day of —, 190—, not having been paid, the principal of said loan became due, and has been settled by canceling the indebtedness and endorsing the policy for Paid-up Insurance amounting to \$— as provided in the contract.

This Paid-up Insurance has a present cash value of \$—. We are ready to return the policy so endorsed, but before doing so desire to find out from you whether you would prefer that we send you the cash value of the Paid-up Insurance and cancel the policy. Kindly let us hear from you.

Yours truly,

JOHN C. MCCALL, *Secretary.*

By ———.

157 2812 E. April, 1904.

New-York Life Insurance Company, 346 & 348 Broadway, New
York, Darwin P. Kingsley, President.

Secretaries' Department—Division of Policy Loan Securities.

John C. McCall, Secretary. Seymour M. Ballard, Secretary.

Re Policy No. —.

DEAR SIR: By a Loan Agreement executed on the — day of —, 190—, the above policy on the life of — — — was pledged to and deposited with the New-York Life Insurance Company as collateral security for a cash loan of \$—.

The premium and interest due on said policy on the — day of —, 190—, not having been paid, the principal of said loan became due, and has been settled by canceling the indebtedness and endorsing the policy for Paid-up Insurance amounting to \$— as provided in the contract.

The policy as so endorsed is returned herewith.

Yours truly,

JOHN C. McCALL, *Secretary.*

By — — —.

(Encl.)

158 The specific form of said letters to be used in communicating with the policyholder about the foreclosure depended of course upon the form of his policy and the facts and circumstances in the case. If there was any special circumstance this would be added in typewriting on that one of the above customary forms sent him.

If after the foreclosure of a loan there was any balance in cash payable to the policyholder out of the value of his policy we then as a part of the foreclosure procedure transmitted all the papers to the Department of Policy Claims in the Home Office where a check would be drawn payable to the order of the legal owners of the policy for any such balance, and said department of Policy Claims transmitted the check to the payees thereof, accompanying the same with a letter on the company's customary form for that purpose, which said form is as follows:

159 2120 H. March, 1904.

New-York Life Insurance Company, 346 & 348 Broadway, New
York, John A. McCall, President.

Secretaries' Department—Division of Policy Claims.

John C. McCall, Secretary. Seymour M. Ballard, Secretary.

NEW YORK, —, —, —.

Re Policy No. —.

DEAR SIR: By Policy Loan Agreement dated — — —, and duly executed, the above policy, issued by the New-York Life In-

Insurance Company on the life of ———, was pledged to and deposited with said Company as security for a cash loan of ——— Dollars.

Default having been made in the payment of the premium and interest due on ———, ———, on said policy, said Company, in accordance with the terms of said Agreement, has canceled said policy and its accumulations for the customary cash surrender value allowed by said Company for the surrender of policies of this class, and is liable for the return of the balance only of said cash surrender value after deducting said loan and accrued interest.

As shown by statement below, there is a balance of \$—— to be returned, for which we enclose the Company's Check No. —, on the New York Security and Trust Company, of this city, to the order of ———.

Yours truly,

_____,
Secretary.

Cash Surrender Value.....	\$
Loan	\$
Interest	
Balance.....	\$

160 In every case of foreclosure we always retain at the Home Office the original policy and the policy loan agreement, except where the policy has been endorsed as a paid up insurance.

It has never been the practice of the company to and it never has asked a policyholder to pay a loan as long as his policy continued in force and he paid his interest according to the terms of the loan agreement. It never sent a policy loan agreement into the State of Louisiana for collection and does not expect to do so. It never collected the amount of a loan and does not contemplate doing so on any policy made to any policyholder in the State of Louisiana by legal process either in the State of Louisiana or elsewhere. The company never has made a loan unless it had in its own possession on account of the value of the policy acquired by the payment of premiums thereon in cash ample value as security for the loan.

If on a policy that was pledged with the company for a loan a tontine benefit matures, or if such policy becomes a claim by death or as a matured endowment, then the company in settling the tontine benefit, the death claim, or the endowment benefit deducts the amount of the loan from the amount so payable. If, however, the payment to the policyholder is by way of tontine benefit and the policyholder desires to continue the loan and will execute a new loan agreement for that purpose the company will continue the loan. All policy loan settlements of every kind are and always have been made by the company at its Home Office. The contracts are and always have been taken there and they are and al-

ways have been continuously kept there in so far as any loans made to policyholders in Louisiana are concerned. Policy loan agreements and pledged policies have been kept in some

cases at the company's office of Issue in Chicago and at its Paris office, but none of these have ever had anything to do with policyholders in Louisiana.

No agents, employee or representative of the company in the State of Louisiana has ever made a policy loan contract for the company or had the custody of the papers relating to such loan.

Tenth interrogatory. You may state, if you know, whether or not the complainant has ever made within the State of Louisiana any loans of money on interest or acquired any credits with the said state for moneys loaned or advanced for goods sold?

Ans. to tenth interrogatory. It has not.

Eleventh interrogatory. You may state whether or not your answer to the above ninth interrogatory calling for the methods which the company has always employed in making all its policy loans and for the procedure which it has always followed in policy loan transactions includes every transaction of the kind or class referred to which the company has ever had with any person residing in the State of Louisiana?

Ans. to eleventh interrogatory. It does.

Twelfth interrogatory. In making loans on policies you may state, if you know, on what the company places its reliance for their final payment?

162 Answer to twelfth interrogatory. It relies solely for the payment of such loans upon the reserve value of the policy which is pledged as security for the loan. The financial responsibility of the policyholder is never an element that enters into the company's consideration in making such loans or in dealing with them.

Thirteenth interrogatory. If a person who has borrowed money from the company on the security of his policy pays the loan, where, if you know, is the payment made?

Answer to thirteenth interrogatory. The payment is made at the Home Office of the company in New York City either by the borrower remitting directly to the company through the mail, or sending the money to the Home office through the company's branch office in his vicinity.

Fourteenth interrogatory. What is the company's procedure if it receives from a borrower the amount of the loan?

Answer to fourteenth interrogatory. If on receipt of the amount of the loan at the Home office the sum remitted by the borrower is found to be correct, we then return the policy through the mails to him and acknowledge payment of the loan; but we never return to him the loan agreement; that we retain as a part of our Home Office files and mark it canceled.

Fifteenth interrogatory. If a policyholder in undertaking to pay his loan fails to remit the proper amount due, what is your procedure?

Answer to fifteenth interrogatory. If the amount the policyholder remits is less than the amount due on the loan we credit him with the amount received and advise him of the balance due. If the amount received is more than the amount due we return the excess with the policy.

Sixteenth interrogatory. Where, if you know, is the interest on policy loans collected?

Answer to sixteenth interrogatory. Through the Comptroller's Department in the Home Office of the company, which in the notices prepared by that Department giving the amount and due date of the premium, incorporates also the amount of interest due and usually authorizing payment at the branch office in the policyholder's vicinity as well as at the Home Office.

Seventeenth interrogatory. Since the creating of the Division of Policy Loan Securities you may state, if you know, whether or not that division has since its creation been clothed with the authority and performed the duties and functions about policy loans you have already testified were performed by your division prior to the creation of the Division of Policy Loan Securities in so far as the company's action after completing the loan transaction is concerned?

Answer to seventeenth interrogatory. It does.

Eighteenth interrogatory. You may state if you know whether or not the forms and methods of procedure in handling policy loans at all times after a loan has been completed have been the same since the division of Policy Loan Securities was created as they were before that date?

Answer to eighteenth interrogatory. They have been.

161 *Answers to Cross-Interrogatories Propounded to George C. Newton.*

Cross-interrogatory No. 1. If in answer to interrogatory No. 5, you state that the functions of your division are not now what they formerly were, please particularly state what they formerly were, and what they are now, calling attention to such changes as have taken place; and please particularly state, also, what the functions of your department were for the year 1905 and for the year 1906.

Answer to cross-interrogatory No. 1. I think I have fully answered this question.

Cross-interrogatory No. 2. In answering interrogatory No. 7, please extend such information as to cover fully the years 1905 and 1906.

Answer to cross-interrogatory No. 2. Ever since the creating of the division of Policy Loans in 1900 down to the present time the entire business of the company relating to policy loans was done in the division of Policy Loans, except that on March 1, 1906, the Division of Policy Loan Securities was created, to which was transmitted the loan papers after the consummation of the loan transaction, which said division of Policy Loan Securities since its creation, retains custody of the loan papers, keeps the records thereof and has charge of repayments and foreclosures.

Cross-interrogatory No. 3. In answering Interrogatory No. 8, please confine yourself absolutely to statements of fact, and avoid any and all conclusions of law. Please state particularly what use in such matters was made of your State Agent for Louisiana, omitting no detail whatever in such statement.

Answer to cross-interrogatory No. 3. The company has not had any State Agent in Louisiana since about 1892 or 1893. No use was made during 1905 or 1906 of any representative of the company within the State of Louisiana in the matter of making or handling loans, except in some cases papers were forwarded through that office or interest transmitted through that office to the Home Office.

Cross-interrogatory No. 4. In answering interrogatory No. 9, extend the answer so as to cover particularly the years 1905 and 1906.

Answer to cross-interrogatory No. 4. My answer to Interrogatory No. 9 covers the years 1905 and 1906.

Cross-interrogatory No. 5. In answering interrogatory No. 10, confine yourself to the statement of facts, and eliminate conclusions of law.

Answer to cross-interrogatory No. 5. I think my answer to interrogatory No. 10 taken in connection with my other answers is a statement of fact and not a conclusion of law.

Cross-interrogatory No. 6. In answering interrogatory No. 13 omit no detail or step whatever in the course of such business, and particularly set forth what use is made of your State Agent for Louisiana.

Answer to cross-interrogatory No. 6. No use is made of any agent or representative of the company within the State of Louisiana in receiving payment of loans, except that policyholders
166 who borrow on their policies sometimes remit the money to the company through the New Orleans office, or through the Shreveport office, but the payment is never credited except at the Home Office and after the money is received there. Nor is the loan ever cancelled except at the Home Office and after the money is received there, nor is the loan agreement ever returned to the borrower, but is marked cancelled and retained as a part of the company's records.

Cross-interrogatory No. 7. In answering interrogatory No. 11, be careful to give the whole course and every detail of the transaction, and especially state in full what part the State Agent for Louisiana, plays therein.

Answer to cross-interrogatory No. 7. If the money was received from the policyholder through the company's local office in New Orleans, the policy is returned to him through that office, if on receipt of the money we find the amount is correct. No agent or employee or representative of the company within the State has any other or greater authority in the matter of policy loans than the forwarding functions which I have stated.

Cross-interrogatory No. 8. In answering interrogatory No. 15, be full and explicit as to your procedure in such matters from beginning to end, and especially state in full what use therein is made by you of your State Agent for Louisiana.

Answer to cross-interrogatory No. 8. If the amount received at the Home Office is correct the loan agreement is cancelled and retained here, and the policy sent as above stated to the policy-

holder. If the amount received is less than the correct
 167 amount we advise the policyholder either directly through
 the mails or by way of our New Orleans office, if the remittance was transmitted through that office, or if the amount received is greater than the amount due the balance is returned to the policyholder by check made payable to his order drawn on the company's bank account in the city of New York, the check being transmitted with the policy. Occasionally we send word to the local cashier to refund from his office the excess to the policyholder, but this exceptional method is not often used. No agent or representative of the company in Louisiana has ever had any authority on this subject except as therein stated.

Cross-interrogatory No. 9. In answering interrogatory No. 16, confine yourself to facts and avoid conclusions of law.

Answer to cross-interrogatory No. 9. My division figures the interest on policy loans which will be due on the due date of the premium and sends a memorandum thereof to the comptroller's department. That department before the maturity of the premium makes up a notice to the policyholder showing the amount of premium and interest that will be due, the due date thereof, and advising the policyholder that the premium is payable at the Home Office, but usually also authorizing him to pay it to the cashier of the branch office in his vicinity. If the policyholder pays the premium he usually also pays the interest, and both are paid either by remitting directly to the Home Office, where it is received in the Comptroller's Department, or if they pay to the office in their vicinity it is reported each day by that office to the
 168 Comptroller's department, and drawn out of the company's No. 1 bank account by the Treasurer's department on Thursday of each week.

Cross-interrogatory No. 10. In answering interrogatory No. 17, please state in full what was in 1905 and 1906 the division of Policy Loan Security.

Answer to cross-interrogatory No. 10. There was no division of Policy Loan Securities in 1905. This Division was created March 1, 1906, and I have already fully stated its functions. The business done by the Division of Policy Loan Securities after the creation of that Division, March 1, 1906, was all done by my division during the year 1905 and down to March 1, 1906.

Cross-interrogatory No. 11. Please state whether or not it is the custom of your company, or whether it was the practice in 1905 and 1906, to grant policyholders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidence of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, and if not the practice in the years mentioned, was not this method resorted to in a number of instances.

Answer to cross-interrogatory No. 11. No, it has always been the company's custom and practice to require the policyholder to pay the premium on or before the day it became due as stated in the

policy, but in certain cases the company has extended the time for
 paying the premium, but never in any instance except ac-
 169 cording to the terms of the company's blue note contract, the
 terms and conditions of which the company has always
 rigidly adhered to.

Cross-interrogatory No. 12. Please state specifically how and when
 you obtained sufficient information to answer the foregoing inter-
 rogatories and cross interrogatories.

Answer to cross-interrogatory No. 12. I obtained the information
 to answer these interrogatories in the regular transaction of my
 duties as superintendent of the division of Policy Loans. I have
 been in the company's employ for twenty four years, and have been
 employed in and about making loans on policies ever since we com-
 menced to make loans on policies in 1892, with the exception of
 about six months at the inception of the business.

(Signed)

GEORGE C. NEWTON.

Subscribed in my presence and sworn to before me this 27th day
 of June, 1907.

[SEAL.]

(Signed)

CHAS. L. BURR,

Natary Public, New York Co., N. Y.

FREDERICK H. SHIPMAN, of lawful age, being by me first
 170 duly examined, cautioned and solemnly sworn to testify the
 truth, the whole truth and nothing but the truth, deposeth
 and saith as follows:

First interrogatory. Please state your name, age, place of resi-
 dence and occupation?

Answer to first interrogatory. My name is Frederick H. Ship-
 man; age, fifty two; I reside in Morristown, New Jersey, and my
 occupation is Assistant Treasurer of the New York Life Insurance
 Company, complainant.

Second interrogatory. How long have you been employed in
 your present occupation with the complainant?

Answer to second interrogatory. For fourteen years.

Third interrogatory. And for the time that you have been in
 the employ of the complainant what have been your duties?

Answer to third interrogatory. For seven years last past I have
 been Assistant Treasurer and as such it has been my duty to have
 general supervision of the clerical force in the Treasurer's depart-
 ment, to assist the treasurer in managing the finances of the com-
 pany, and to manage and control, with the treasurer, the balances
 in banks to the company's order in the various localities through-
 out the country, and moneys in possession, on deposit or in hand
 in the company's various offices, and in the various localities through-
 out the United States where the company does business.

For a period of seven years prior to about seven years
 171 before this date I was chief clerk in the Treasurer's depart-
 ment of the complainant, there being at that time no office
 entitled "Assistant Treasurer," but my duties then were substan-
 tially the same as they have been since.

Fourth interrogatory. Are you familiar with the complainant's method of handling its funds at all times during the year 1906, and also at all times during your employment with the complainant, in the city of New Orleans, whether its funds so handled are classified as money in possession, on deposit or in hand, or other wise?

Answer to fourth interrogatory. I am.

Fifth interrogatory. You may fully state what the complainant's method was of handling all funds belonging to it, or in which it had any interest within the City of New Orleans or the territory tributary to the New Orleans Branch Office of the complainant, or which the complainant received by way of New Orleans, at all times during the year 1906?

Answer to fifth interrogatory. In April 1893, the company opened an account with the Whitney National Bank of New Orleans, now the Whitney Central National Bank, which was designated on the books of the bank, and treated between the bank and the company as the "New York Life Insurance Company Number One Account." To the credit of this account ever since it was opened has been deposited daily all moneys received at the New Orleans Branch Office, except as hereafter stated. The moneys deposited in the Number One Account were deposited there *daily* for transmission to the

172 Home office of the company in the city of New York, and were never subject to the check, or to be drawn upon by any person except by the Treasurer of the company or myself together with other Home Office officers of the company, the draft or check always to be drawn from the Home Office by two of the above named Officers. No one in Louisiana ever drew, or could draw, or had authority to draw, money out of this Number One Account. Each day when the local cashier of the New Orleans Branch Office deposited money in this Number One Account, he obtained from the bank a duplicate deposit slip which he at once mailed to the comptroller of the company at its Home Office in the city of New York, who, from the data contained in such deposit slip, kept a daily balance as standing to the credit of the company in its Number One Account in said Bank in New Orleans, and On Thursday of each week the comptroller in the Home Office reported to the Treasurer's department in the Home Office the amount of money accumulated to said account during the current week, and thereupon the Treasurer, or myself, or other officers in the Home Office, on Thursday of each week, drew a draft on said Number One Account on the Whitney National Bank of New Orleans, or the Whitney Central National Bank account for the entire amount to the account as thus ascertained. This system has been in vogue since the year 1893, and, of course, was operative during the whole of the year 1906 and is still in vogue:

The company also in 1893 opened another account in New Orleans, known as the "New York Life Insurance Company Account Number Two", which, at its inception, was opened in the New Orleans National Bank, but later in the year 1893 was transferred to the Whitney National Bank, where it was known on the
173 books of the bank and between the bank and the company as the "New York Life Insurance Company Account Num-

ber Two". This number Two Account was opened for the purpose of keeping an account which could be checked against by the cashier of the New Orleans Branch office for the purpose of paying the current expenses of the office, and the balance to that account was, and has always been limited to a maximum of \$1,000, except during the early history of the account when the maximum limit was \$500. The balance to the credit of this number Two Account has always been reported to the Home Office daily, and, as a rule, is kept considerably below the limit of the account. This Number Two Account represents all the cash and all the credit employed by the complainant in its business in the city of New Orleans and in the territory tributary thereto.

In addition to these two accounts, Number One and Number Two, the company has for more than five years last past maintained another account in the City of New Orleans, in the Whitney National Bank or Whitney Central National Bank, known as the "New York Life Insurance Company Collection Account." This account is used for the following purpose: At times the company receives at the Home Office drafts or other money obligations for premium payments, which drafts or obligations are payable in the City of New Orleans or in its vicinity. Therefore, and for convenience, it transmits paper of this character, when received, to the Whitney Central National Bank for collection and credit, and on Thursday of each week, by draft executed either by the Treasurer, or myself,

and by another officer of the company, the company draws out the entire amount to the credit of this collection account as shown by its books. No person in Louisiana has ever had authority to, or has ever drawn against this account.

The company never had during the year 1906 any money in possession, on deposit or in hand in the City of New Orleans, except the balances to said three bank accounts, and except a small amount of cash in the cash drawer in the office of the cashier for the convenience of that office in making change, which cash in the cash drawer was never an item of any importance, and probably never exceeding \$200 or \$300.

Sixth interrogatory. You may give, if you can, the balance standing to these several bank accounts in the City of New Orleans on Thursday of each week during the months of January, February, March and April, 1906, and before you and your associates at the Home Office drew your draft for the balance to said several accounts on that day in each of said weeks, or, if you prefer to give the balance for any other day in each week you may do so.

Answer to sixth interrogatory. On Thursday of each week during the time stated in the question our books showed the balances to the Number One Account in the Whitney Central National Bank of New Orleans to be as follows:

January 4	\$6,722.00
" 11	11,630.54
" 18	17,103.09
" 25	10,728.04

February	1	13,207.23
"	8	11,557.34
"	15	14,846.37
"	23	15,640.50
March	1	11,614.61
"	8	12,990.21
"	15	17,424.96
"	22	11,765.07
"	29	16,150.32
175		
April	5	12,857.38
"	12	15,185.35
"	19	11,814.65
"	26	16,443.83

On Tuesday of each week during the time stated the balances to the Number Two Account in the Whitney Central National Bank of New Orleans were as follows:—

January	2	\$122.90
"	9	374.38
"	16	834.02
"	23	751.62
"	30	805.00
February	7	262.83
"	14	751.02
"	21	243.52
"	28	6,337.82
March	7	928.90
"	14	429.30
"	21	614.32
"	28	373.78
April	4	149.08
"	11	333.17
"	18	142.90
"	25	886.10

On Thursday of each week during the time stated the balances to collection Account in the Whitney Central National Bank of New Orleans were as follows:

January	4	\$253.80
"	11	78.21
"	18	
"	25	517.28
February	1	
"	8	31.66
"	15	
"	22	147.41
March	1	147.98
"	8	713.28

"	15.....	616.60
"	22.....	126.06
"	29.....
April	5.....
"	12.....	83.00
"	19.....
"	26.....	162.36

176 Seventh interrogatory. You may state whether or not the balances to these several accounts, as you have given them in answer to the last question, are representatives of the maximum balances carried to the credit of the company under each of these several accounts at any time during the year 1906, and if there is any balance to the credit of any of said accounts on any particular date that is, or on its face appears to be, unusual, you may explain the same?

Answer to seventh interrogatory. The credit balances to each of these several accounts as shown in my answer to the last interrogatory, are representative of the maximum balances carried by the company to its credit, and there are none of them unusual except the credit on February 28, to Number Two Account of \$6,537.82. This balance is unusual and is due to the fact that the company's state and city of New Orleans annual license tax for 1906, which amounted to \$10,500 divided equally between the State and the City of New Orleans, \$5,250 annually each, was payable on or about the first day of March, 1906. To prepare for the payment of these taxes the cashier of the New Orleans Branch Office was specifically authorized to deposit funds to the credit of Number Two Account so that these state and New Orleans license taxes could be paid by the cashier of the local branch office by check drawn by him on the Number Two Account. This accounts for the unusual balance February 28, of \$6,537.82 to the Number Two Account, was a balance for this express purpose and would not occur again, and did not occur again during the year.

177 Eighth interrogatory. You may give, if you can, the balance standing in these several bank accounts in the City of New Orleans on January 1st, 1906.

Answer to eighth interrogatory. The balances standing to the credit of these several accounts in the City of New Orleans on the first of January, 1906, were as follows:

In No. 1 Account.....	824,534.87
In No. 2 Account.....	169.24
In Collection Account.....	253.80

Answers to Cross-Interrogatories Propounded to Frederick H. Shipman.

Cross-interrogatory No. 1. If you know, please state how funds collected by your State Agent and his sub-agent in Louisiana were handled during the year 1905, and in 1906; in what banks deposited; by whom deposited; in whose names any and all accounts were

carried; what authority any person in Louisiana had with reference thereto, particularly with regard to checking against same. Please state specifically the use you make, and how you make it, of Bank Accounts "A," and "B," if you testify you have such bank accounts.

Answer to cross-interrogatory No. 1. The company had no state agents or sub-agents in Louisiana during 1905 or 1906. During those years it had bank accounts at Shreveport to the credit 178 of which deposits were made and which were entered and handled in the same way that I have described in my answer to the Fifth interrogatory except as to the account therein referred to and described as "New York Life Insurance Company, Collection Account." I think my answers to the direct interrogatories cover fully this cross-interrogatory not otherwise here expressly answered.

Cross-interrogatory No. 2. Please state whether collections made in the parishes (counties) outside of the Parish of Orleans are transmitted to your State Agents in the City of New Orleans, and whether or not all final collections and disbursements growing out of Louisiana business are not made by him.

Answer to cross-interrogatory No. 2. Collections made in some parishes outside of the Parish of Orleans are transmitted to the cashier of the New Orleans Branch office, but this does not include the Parishes within the State where the policyholders in their premium notices are authorized to pay the Shreveport cashier.

It is not true that all final collections and disbursements growing out of Louisiana business are made in New Orleans or by a State Agent of the company there. No money is received at the New Orleans office except from policyholders residing within the territory which has been assigned to the New Orleans office of the company. No disbursements growing out of Louisiana business are made at the New Orleans office at all except the clerk hire of that office is paid out of the account there, and perhaps small incidental expenses for running the office.

179 Cross-interrogatory No. 3. Kindly extend the data asked for in Interrogatory No. 6, so as to show the amount regardless of outstanding drafts, checks, etc., on each day of the year 1905, as well as the first day of 1906, held in any bank in the State of Louisiana representing your company's business in that state; and if there are more than one such account, please give this information with reference to each account separately; and please further state how you are in a position to testify to the data asked for by counsel for complainant as well as Counsel for defendant in these particulars.

Answer to cross-interrogatory No. 3. I cannot give the daily balances for 1905, and if I could I do not see why I should do so. I understand this controversy to involve taxes on property for the year 1905. That being so, if the company had owned the State of Louisiana in 1905, but did not own any of it in 1906 I do not see how it could be taxed in 1906 for property it did not then own. In order, however, not to seem to be unwilling to answer the question I will state that the highest bank balance standing to the company's credit to its No. 1 account, for the latter half of the year 1905, as

shown by the company's records, was, on Thursday of each week, and before the company drew its draft for said balance, as follows:

180

Date.		Amount.
July	5th	\$8,973.46
"	12th	10,825.93
"	19th	8,904.81
"	26th	13,155.52
Aug.	2nd	11,059.22
"	9th	12,572.92
"	16th	10,317.70
"	23rd	10,491.45
"	30th	14,987.96
Sept.	6th	7,433.97
"	13th	9,935.13
"	20th	8,300.21
"	27th	15,241.18
Oct.	4th	11,157.24
"	11th	11,629.97
"	18th	9,421.85
"	25th	9,437.31
Nov.	1st	9,997.32
"	8th	10,732.00
"	15th	11,964.00
"	22nd	12,363.73
"	29th	10,395.71
Dec.	6th	9,656.85
"	13th	14,507.18
"	20th	13,870.60
"	27th	13,492.30

On January 1, 1906, the balance to the No. 1 Account in the Whitney National Bank was \$24,534.87. This was an unusually large balance, and greater than the balance would be in the ordinary transaction of the company's business at any other time during the year, because a larger number of premiums mature in December than in any other month, and especially in the latter part of December. Outstanding against this balance at that time were two drafts, one drawn December 28th, for \$13,492.30, and one drawn December 30th, for \$4,617.62.

On January 1, 1906, the balance to the No. 2 Account was \$169.24.

On Thursday of each week during the following dates named in 1905 the balance to the credit of the No. 2 Account in the 181 Whitney Central National Bank, was as follows:

Date.		Amount.
July	5th	\$613.36
"	12th	176.72
"	19th	187.37

Date.	Amount.
July 26th.....	\$787.57
Aug. 2nd.....	525.04
" 9th.....	545.13
" 16th.....	76.60
" 23rd.....	578.35
" 30th.....	833.76
Sept. 6th.....	272.98
" 13th.....	897.05
" 20th.....	989.84
" 27th.....	600.58
Oct. 4th.....	469.56
" 11th.....	248.62
" 18th.....	669.51
" 25th.....	591.14
" 31st.....	668.22
Nov. 8th.....	431.83
" 15th.....	603.48
" 22nd.....	823.05
" 29th.....	484.92
Dec. 6th.....	628.23
" 13th.....	525.23
" 20th.....	392.93
" 27th.....	451.10

On January 1, 1906, the balance to the Collection Account in the Whitney Central National Bank was \$253.80.

On Thursday of each week during the following dates named in 1905, the balance to the credit of the Collection Account was as follows:

Date.	Amount
July 5th.....	\$.....
" 12th.....	198.02
" 19th.....	714.03
" 26th.....	451.89
Aug. 2nd.....	344.00
" 9th.....	254.41
" 16th.....	344.55
" 23rd.....
" 30th.....	467.10

182	
Date	Amount
Sept. 7th.....	1,382.40
" 13th.....
" 20th.....	578.27
" 27th.....	79.72
Oct. 4th.....	90.93
" 11th.....	25.34
" 18th.....	137.47
" 25th.....	514.14

Date	Amount
Nov. 1st.....	\$704.92
" 9th.....	
" 16th.....	262.95
" 23rd.....	34.13
Dec. 1st.....	800.31
" 6th.....	383.75
" 14th.....	50.66
" 21st.....	
" 28th.....	

The Balances on Thursday of each week during the year 1906, but not given in this testimony, would run substantially the same as those I have given. The same is true of the other Accounts.

I am in position to testify to this because of my duties as Assistant Treasurer of the company and my supervision over the records kept under my jurisdiction in the Treasurer's Office, and which I know to be correct.

Cross-interrogatory No. 4. Please state whether or not it is the custom of your company, or whether it was the practice in 1905 and 1906, to grant policyholders an extension of time within which to pay their premiums; and whether or not, for such deferred payments, promissory notes of the debtor, or other evidences of his indebtedness, have not been received in lieu of cash payment of such premiums; and if not the practice now, or if not the practice in the years mentioned, was not this method resorted to in a number of instances.

183 Answer to cross-interrogatory No. 4. The Treasurer's department has nothing whatever to do with the collection of premiums and I have no personal knowledge of the matters inquired of in this interrogatory. I think I know the facts but I get them as a matter of hearsay, and not from the performance of my duties as an employee of the company, and therefore do not feel qualified to answer the question.

Cross-interrogatory No. 5. Please state specifically how and when you obtained the information sufficient to answer the foregoing interrogatories and cross interrogatories.

Answer to cross-interrogatory No. 5. I obtained the information enabling me to answer these interrogatories and cross interrogatories in the performance of my duties as Assistant Treasurer of the company. Where specific figures are given, from the records in my office kept under my direction and jurisdiction, and which I know to be correct, except the figures as to the number 2 account, which were furnished me by the company's comptroller. If there had been anything incorrect in these figures as given me by the Comptroller I believe I should have known it, because the matter would then have come into my department and under my jurisdiction. Therefore, there is no question in my mind about the correctness of these figures.

(Signed)

F. H. SHIPMAN

Subscribed in my presence and sworn to before me this 27th day of June, 1907.

(Signed)

CHAS. L. BURR,

[SEAL]

Notary Public New York Co., N. Y.

184 STATE, COUNTY, AND CITY OF NEW YORK, ss:

I, Charles L. Burr, a Notary Public duly commissioned and qualified for and residing in said county and State do hereby certify that the depositions of the above named John C. McCall, John J. Mahoney, Frederick H. Shipman, and George C. Newton, witnesses on behalf of complainant on the trial of a cause now pending in the Circuit Court of the United States for the Eastern District of Louisiana at New Orleans, in which the New York Life Insurance Company, is complainant, and the City of New Orleans and others are defendants, were taken before me as such Notary Public pursuant to the annexed agreement of counsel to take testimony on interrogatories; that I am not counsel or attorney or relative of either or of any party to said suit, or otherwise interested in the event thereof; that before testifying each of said witnesses was by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth; that said Interrogatories were by me propounded to them and their several answers thereto were taken down in my presence and the presence of said witnesses respectively, by Freda D. Wilzine, who is not attorney or relative of either party or otherwise interested in the event of said suit, and were by her transcribed from her shorthand notes, and after the same was so taken down and transcribed was read over by each of said witnesses respectively who there and then severally subscribed and swore to the same as hereinbefore certified; that they

185 were retained by me in my possession until they were, and they were by me sealed up, endorsed, addressed and transmitted to the clerk of said court. Said original interrogatories and cross interrogatories and said original agreement to take testimony on interrogatories are returned herewith.

In Witness whereof I have hereunto set my hand and affixed my seal at the City of New York this 2nd day of July, 1907.

(Signed)

CHAS. L. BURR,

[SEAL]

Notary Public, New York County, New York.

Fees for taking these depositions Fifty Dollars paid by the complainant.

(Signed)

CHAS. L. BURR,

Filed October 27, 1906.

No. 13428.

United States Circuit Court, Eastern District of Louisiana.

NEW YORK LIFE INSURANCE CO.

vs.

BOARD OF ASSESSORS ET ALS.

Policy Loan Agreement.

Pursuant to the provisions of Policy No. —, issued by the New York Life Insurance Company on the life of —, the undersigned have this day obtained a cash loan from said Company of the sum of Dollars (\$ —) the receipt of which is hereby acknowledged, conditioned upon pledging as collateral said policy with said Company as sole security for said loan and giving assent to the terms of this Policy Loan Agreement; therefore,

In consideration of the premises, the undersigned hereby agree as follows:

1. To pay said Company interest on said loan at the rate of five per cent. per annum payable in advance from this date to the next anniversary of said policy, and annually in advance on said anniversary and thereafter.

2. To pledge and do hereby pledge, said policy as sole security for the payment of said loan and interest and herewith deposit said policy with said Company at its Home Office.

3. To pay said Company said sum when due with interest, reserving however the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

4. That said loan shall become due and payable—(a) Either if any premium on said Policy or any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by satisfying said loan in the manner provided in said policy.

(b) Or, (1) on the maturity of the policy as a death-claim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the selection of a discontinuing option at the end of any dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

5. That the application for said loan was made to said Company at its Home Office in the City of New York, was accepted, the money paid by it, and this agreement made and delivered there; that said principal and interest are payable at said home office, and that this

contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said Company.

In witness whereof, the said parties hereto have herunto set their hands and affixed their seals this — day of —, 190—.

"Exhibit 'A.'"

— — — [L. S.]
 — — — [L. S.]
 — — — [L. S.]

Signed and sealed in
 presence of — — —.

[On right margin.] Forwarded from — — Branch Office,
 Premium paid in full to — — —, 190—. B. N., \$— — —.
 — — —, *Cashier.*

"EXHIBIT B."

Filed October 27, 1906.

No. 13428.

United States Circuit Court, Eastern District of Louisiana.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

Premium Lien Note.

\$..... 190...

.....after date I promise to pay to the order of the New York Life Insurance Company, at the office of said Company in the City of New York, the sum of.....Dollars with interest in advance at the rate of five per cent. per annum (for value received); being for premium due..... on Policy No.....issued by said Company on the life of.....

It is understood and agreed:

1. That this note may be renewed, if the interest thereon and subsequent premiums on said policy are duly paid.

2. That if any premium on said policy, or interest on this note, is not paid when due, this note shall thereupon immediately become due and payable, with interest, and shall, without notice of any kind, be paid by deducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due, the balance only of said sum, if any, to be available for the purchase of insurance under and pursuant to the non-forfeiture provision of said policy.

3. That in the settlement of any claims or any benefit under said policy before this obligation shall have been fully paid the amount of this note shall be deducted from the amount otherwise payable by said Company.

Signature of the person whose life is insured.)

Signature of the person or persons for whose benefit the insurance is effected.)

Exhibit "B."

188 United States Circuit Court, Fifth Circuit, New Orleans
Division. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALS.

Interrogatories propounded to JOHN J. MAHONEY, witness for Complainant, residing in New York City, his answers hereto under oath to be used in evidence on trial of the within cause

First.

Please state your name, age, residence and occupation?

Second.

Please state the amount of premium lien notes given by Louisiana policy-holders, in the New York Life Insurance Company, within the jurisdiction of the New Orleans Office and outstanding on January 1st, 1906?

Third.

Do you know, or can you set forth, any other matter or things which may be of benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If so, please state the same fully and at large in your answer.

(Signed)

RICE & MONTGOMERY, *Solicitors.*

It is agreed that this testimony shall be taken and used in evidence without any formality, except that the witness answer under oath.

189 United States Circuit Court, Fifth Circuit, New Orleans
Division. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

BOARD OF ASSESSORS ET ALS., Defendants.

The Board of Assessors of the Parish of Orleans, the City of New Orleans and John Fitzpatrick, State Tax Collector of the First District of the Parish of Orleans, defendants in the above entitled and numbered cause, reserving the benefit of all manner of exceptions and objections to the admissibility relevancy or competency of any of the interrogatories propounded by the complainant herein to John J. Mahoney, propounded the following cross interrogatories.

Cross-interrogatory No. 1. If, in answer to the second interrogatory, you state the amount of premium lien notes given by Louisiana policy holders in the New York Life Insurance Company within the jurisdiction of the New Orleans Office and outstanding on January 1, 1906, please state whether you have ascertained said amount yourself or whether you have only testified from information received. If you testify from your own knowledge of the facts, the amount of the premium lien notes for 1906, please give the same information as to January 1, 1905.

(Signed)

H. C. DUPRE,

Assistant City Attorney.

F. C. ZACHARIE,

Att'y for John Fitzpatrick, State

Tax Collector, 1st Dist.

GEO. H. TERRIBERRY,

Attorney for Board of Assessors.

190 UNITED STATES OF AMERICA,

State, County, and City of New York, ss:

In the Circuit Court of the United States for the Eastern District of Louisiana, New Orleans Division.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

BOARD OF ASSESSORS ET ALS., Defendants.

Additional Deposition of John J. Mahoney.

Be it known, That acting under and by virtue of the annexed agreement issued in the above entitled and numbered suit and the authority in me vested, I Charles L. Burr, a Notary Public duly commissioned and qualified for and residing in said County and State, and Commissioner under said agreement, caused to personally come and appear before me on this 12th day of October, 1907, at the hour of ten o'clock in the forenoon the witness John J. Mahoney named in the annexed commission and agreement, and after having first duly sworn said witness according to law to tell the truth, the whole truth, and nothing but the truth, and truthfully to answer the annexed interrogatories and cross-interrogatories, I did then propound to him the said interrogatories and cross-interrogatories, to which he made answer as follows, towit:

To the first interrogatory he answers and says: My name is John J. Mahoney; I am thirty-six years of age; I reside in the City
191 of New York in the State of New York; I am the same John J. Mahoney who testified in this case under date of June 26, 1907, and my occupation is the same now as it was then, namely Chief Clerk in the Note Division of the Comptroller's Department of the New York Life Insurance Company, the complainant.

To the second interrogatory he answers and says: The amount of premium lien notes given by Louisiana policy-holders in the New

York Life Insurance Company and held or owned by the Company on the 1st day of January 1906, or in which on that date it was in any way interested was of the total face value of \$22,473.51; the amount of such notes made by policy-holders residing within the jurisdiction of the New Orleans Office would be substantially one-half of this sum. I am not able to give the exact amount of the notes made by policy-holders who are tributary to the New Orleans office because the notes are not kept by the Company in a way that that can be definitely ascertained without an enormous amount of work.

To the third interrogatory he answers and says: In answer to this question I think it is material that I should call attention to the fact that in my deposition filed in this case taken on the 26th day of June, 1907, in answer to the 16th Interrogatory I stated that it was a practical impossibility to give the exact amount of premium lien notes outstanding on January 1, 1906, and there gave the reason for this practical impossibility.

Since making my answer to said 16th Interrogatory, I was instructed by counsel for the complainant that it was absolutely necessary that the Company have an accurate statement, or as nearly an accurate statement of the notes held by the Company January 1, 1906, as could be obtained.

In view of this demand, with a corps of twenty-three or twenty-four clerks, I went over all the premium lien notes the Company owned or held on the 1st day of January, 1906, and ascertained their total amount on that date from an inspection of the notes themselves and the Company's records, and the answer I have given in answer to my second question is the result of this ascertainment. This was an enormous job, but it would have been immensely increased to have undertaken to segregate the notes of policyholders residing within the jurisdiction of the New Orleans office because the notes, while showing the State of Louisiana, did not show as a rule the county, and it would have been necessary to take the entire list of New Orleans Notes and for a very large number of them to have obtained from the Company's records, or other sources, the counties in which the insured resided to determine whether or not it was within or without the jurisdiction of the New Orleans office within the State.

Answers to Cross-Interrogatories.

To cross-interrogatory No. 1 he answers and says: The facts testified to by me in answer to direct interrogatory No. 2, were ascertained by me, in the way I have testified in answer to direct interrogatory No. 3. The Clerks who assisted me in finding out the amount of said premium lien notes were each and all acting under my direction; I managed and supervised the work and personally know that the results thereof as given in my answer to Interrogatory No. 2 are correct. The facts stated in said interrogatory were obtained from the original notes in the Company's possession.

I cannot give the amount of the premium lien notes as to Jan-

uary 1, 1905, because an ascertainment thereof would now require substantially the same character and amount of work that was required for ascertaining the amount thereof January 1, 1906, and this work we have not done and this fact we have not ascertained.

(Signed)

JOHN J. MAHONEY.

Subscribed in my presence and sworn to before me this 12th day of October, 1907.

[SEAL.]

(Signed)

CHAS. L. BURR.

Notary Public.

All of the above answers were reduced by me to writing in the presence of said witness and were then read over to said witness, who persisted therein, and were then signed by said witness in my presence.

In witness whereof, I have hereunto set my hand and seal of office this 12th day of October, 1907.

[SEAL.]

(Signed)

CHAS. L. BURR.

Notary Public.

194

Agreement No. 1.

Filed Dec. 13, 1907.

United States Circuit Court, Fifth Circuit, New Orleans Division,
In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

Evidence of application to Board of Assessors and Budget Committee of City Council for Reduction of Assessment on Credits to \$20,000 and of the refusal of same.

It is hereby admitted by all parties to within cause:

That as alleged in Article VII of Complainant's bill on the 31st day of March, 1906, during the period when said lists were open for public inspection and correction, Complainant herein filed an additional and supplemental written complaint or petition to said Board of Assessors further protesting and objecting to said listing and assessment for that your complainant was not subject to assessment for taxation for money loaned on interest, or all credits, all bills receivable for money loaned or advanced for goods sold, for that Complainant owned property of no such kind within said State but that in no event should Complainant be taxed on said item for money loaned on interest, all credits, bills receivable for money loaned on interest and advanced for goods sold on a valuation in excess of \$20,000 and prayed for a reduction of said item to said sum

of \$20,000, but nevertheless said Board of Assessors wholly disregarding said written complaint and said supplemental written complaint, and the respective prayers thereof, overruled the same and affirmed its said listing and valuation and assessment as aforesaid, for the reason that the Board of Assessors believed that Complainant had sufficient property taxable under the head of money loaned on interest, all credits, bills receivable for money loaned on interest and advanced for goods sold to warrant the assessment made.

195 And further that, as alleged in Article VIII of Complainant's bill, on the 6th day of April, 1906, Complainant filed a written Complaint or petition as required by law, with the Budget and Assessment Committee of the City Council of New Orleans, praying said committee to review and correct the list and valuation made by the Board of Assessors, by cancelling said item of money loaned on interest and advanced for goods sold, or in the alternative by reducing the valuation of said item from \$568,900 to \$20,000, but said Committee on to-wit, the 9th day of April, 1906, denied the prayer of said Complainant and refused to give Complainant any relief whatsoever and approved the listing, valuation and assessment of the Board of Assessors.

N. O. Dec. 2 '07.

(Signed)

GEO. H. TERRIBERRY,

Atty Brd. of Assessors,

H. G. DUPRE,

Ass't City Atty, Solicitor for City of N. O.

F. C. ZACHARIE,

Atty for Tax Coll'rs. Par. of Orleans, Deft.,

"Agreement No. 1."

196 United States Circuit Court, Fifth Circuit, New Orleans
Division. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

*Evidence of Returns Made by and Assessments of Complainant
Previous to the Year 1906.*

It is hereby admitted by all parties to within cause:

That in the year 1905, Complainant made return on money in possession, on deposit or in hand of the amount and value of \$1,000 and on furniture of the amount and value of \$500, and that the Board of Assessors raised the cash on hand to \$2,500, but did not change the assessment in any other particular.

That in 1904, Complainant made no return but was assessed on money in possession, on deposit or in hand \$5,000 and on furniture etc., \$250.

In 1903 Complainant was assessed on money in possession, on deposit or in hand of the amount and value of \$5,000 and on furniture \$250.

That previous to 1903, and back to and including the year 1897 Complainant was assessed alone on money in possession, on deposit or in hand and on furniture.

That from 1897 to 1905, inclusive, Complainant was at no time assessed on any money loaned on interest, all credits, all bills receivable for money loaned or advanced for goods sold.

N. O. Dec. 2 '07.

(Signed)

GEO. H. TERRIBERRY,

Atty Brd. of Assessors,

H. G. DUPRE,

Ass't City Atty, Solicitor for City of N. O.

F. C. ZACHARIE,

Atty for Tax Collectors, Par. of Orleans, Defts.

"Agreement No. 2."

(Here follow fac-similes of State Tax Receipt and City Tax Receipt marked pp. 197-200, inclusive.)

Assessment District, Stock in Trade, e

5 " " ^{in account} / Cash on hand, Mo

" " " Animals, Vehicles

5 " " Furniture, etc.

" " " Machinery,

" " "

" " " Real Estate,

Without prejudice to
for the balance of
(Sg.)
State Tax Collector
per

Wm. D. D. D.
June 6, 1906

Castro
per
(Sg.)

tc.,	Square No.	\$
ney Lent, etc.	.. 170	\$ 1000
, etc.	..	\$
	..	\$ 500
	..	\$
	..	\$ 1500
	..	\$

The Chair of the State
 to the Government
 John Fitzpatrick
 to First District, Council of Orleans
 C. C. Lottin Deputy

No. 13426
 District of Columbia
 Orleans Division
 Dec. 13, 1907
 W. B. Fuller Dy Clerk

CITY OF NEW ORLEANS--TAX

Received, *June 18th* 190*6*
Chas

ASSESSMENT

Horses, Cows, Etc		
Vehicles		
Merchandise or Stock in Trade		
Money at interest, Credits, Bills receivable		
Money in Possession		
Shares of Stock		
Furniture, Etc,		<i>500</i>
Statuary, Paintings, Etc,		
Diamonds, Jewelry, Etc,		
Stock or Interest in Water Craft		
Trackage, Etc., of Railroad		
Machinery and all Motive Power		
Judgments, Suits, and Causes in Action		
Franchises, Patents, Copyrights, Trade-Marks, Privileges and Charters, all Canals, and other Ways of Communication		
Bonds of all Kinds		
Total Taxable Personal Property	\$	<i>500</i>

E. Rainaud
 FOR COMPTROLLER

Assessor's
District

No. of
Square

WHERE SITUATED

5 170 Morris Bldg

No. 284B 15

LEANS--TAX of 1906--On Personal Property.

1906

of *H & Life Ins Co of NY*

Dollars, for tax as described below.

FOR WHAT PURPOSE

AMOUNT

City Alimony 10 Mills

Interest and Redemption, City Bonds }
under Sec. 7, of Act 110 of 1890 } 10 "Special Tax Voted June 6th, 1899 }
for Water, Sewerage and Drainage } 2 "

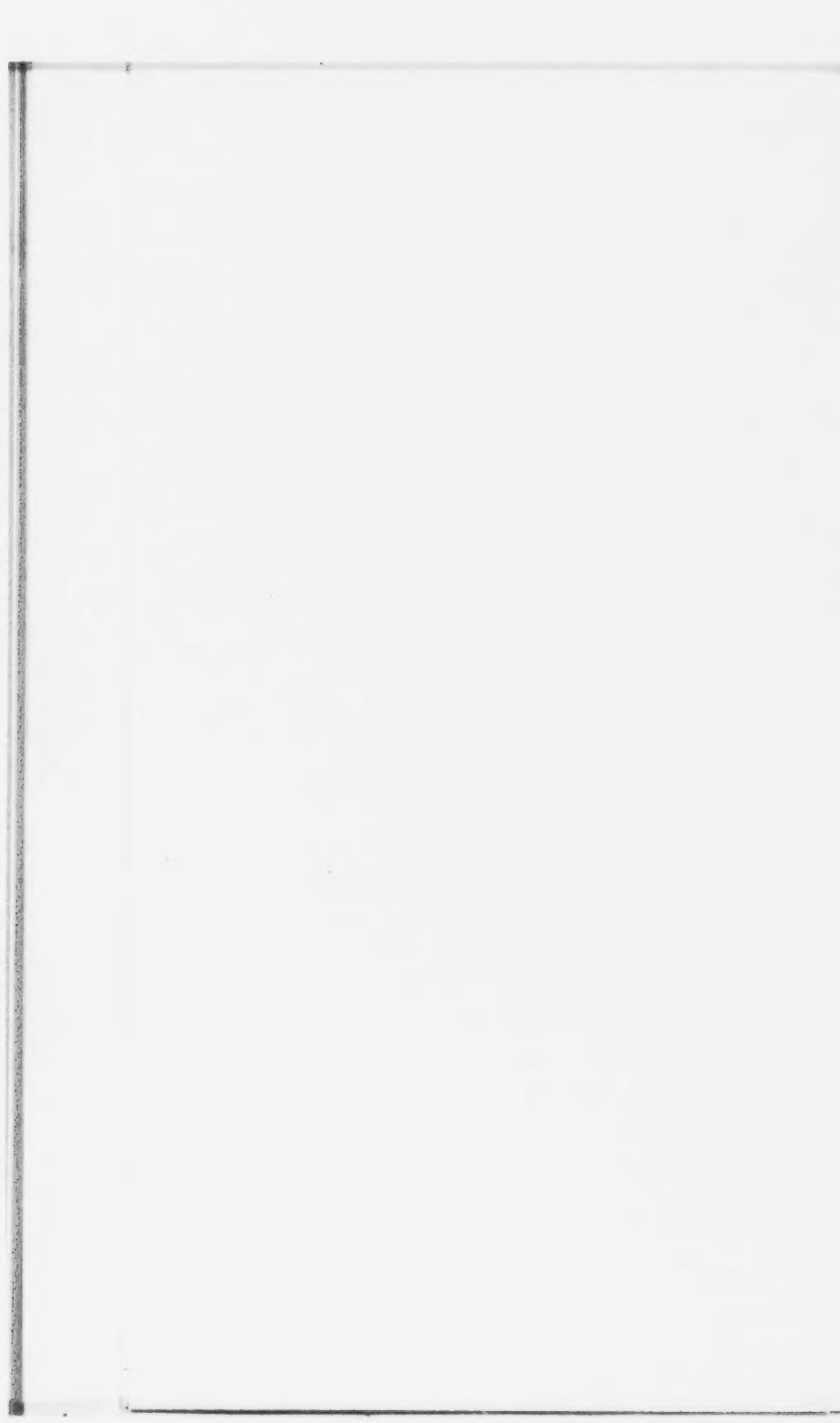
Total Rate of Tax 22 Mills, \$ 11.00

and
COMPTROLLERBy *V. Dyague*
FOR TREASURER

WHERE SITUATED

AMOUNT

Bldg. (H. P. Saunders Supt.)



201

Agreement No. 3.

Filed Dec. 13, 1907.

United States Circuit Court, Fifth Circuit, New Orleans Division.
In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

It is hereby admitted by all parties to within cause:

That the document hereto attached and marked with the number and title of the within cause for identification and purporting to be a blank form of tax return or list, is a true copy of the blank form of the return or list left with Complainant by the Board of Assessors, Parish of Orleans, State of Louisiana in accordance with the Revenue Act of 1898.

(Sig.)

GEO. H. TERRIBERRY,

Att'y Genl. of Assessors.

H. G. DUPRE,

*Ass't City Att'y.**Solicitor for City of N. O.*

F. C. ZACHARIE,

*Att'y for Tax Collectors.**Par. of Orleans, Deft.*

N. O., Dec. 6 '07.

(Here follows fac-simile Blank Form Tax Return, marked pp. 202-204, inclusive.)

205 *Note of Evidence for Complainant.*

Filed Dec. 13, 1907.

United States Circuit Court, Fifth Circuit, New Orleans Division.

NEW YORK LIFE INSURANCE COMPANY

vs.

BOARD OF ASSESSORS ET ALs.

Note of Evidence on behalf of the New York Life Insurance Company, Complainant.

Testimony of the following witnesses taken on commission in New York City by Charles L. Burr, Notary Public on June 25-27th and October 12th, 1907:

- (1) John C. McCall.
- (2) John J. Mahoney.
- (3) George C. Newton.
- (4) Frederick H. Shipman.
- (5) John J. Mahoney, additional testimony.

Exhibits.

1. Agency Agreement—attached to the testimony of John C. McCall and marked "McCall 1."

2. Premium Lien Note—made part of testimony of John J. Mahoney and marked "Mahoney 1."

3. Blue Note—made part of the testimony of John J. Mahoney and marked "Mahoney 2."

4. Policy Loan Agreement—made part of testimony of George C. Newton.

Exhibits Attached to the Testimony of John C. McCall.

1. Agency agreement—marked McCall 1.
"made part of the testimony of John J. Mahoney.
2. Premium Lien Note—marked "Mahoney 1."
3. Blue note—marked "Mahoney 2."

206 *Exhibit- Made Part of the Testimony of George C. Newton.*

- | | | | |
|-----|----------------------------------|---------------|-----|
| 4. | Policy Loan Agreement. | marked Newton | 1. |
| 5. | " " " | " " | 2. |
| 6. | " " " | " " | 3. |
| 7. | Application blank | " " | 4. |
| 8. | Receipt blank | " " | 5. |
| 9. | Letter forwarding loan agreement | " " | 6. |
| 10. | Letter advising foreclosure | " " | 7. |
| 11. | " " " | " " | 8. |
| 12. | " " " | " " | 9. |
| 13. | " " " | " " | 10. |
| 14. | " " " | " " | 11. |
| 15. | " remitting balance | " " | 12. |

Agreements admitting certain facts, marked:

1. "Agreement No. 1"—As to applications for a reduction of assessment on credits.
2. "Agreement No. 2"—As to previous returns and assessment of Complainant.
3. "Agreement No. 3"—As to assessment list left with Complainant and the blank form attached to the agreement and marked.

(Signed) RICE & MONTGOMERY,
Solicitors.

(Signed) JAMES H. McINTOSH,
Of Counsel.

207

Statement of Facts and Opinion of Court.

Filed Jan. 10, 1908.

United States Circuit Court, Eastern District of Louisiana.

No. —.

NEW YORK LIFE INSURANCE CO.,

vs.

BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS ET AL.

I.

Statement of Facts.

This is a suit, in effect, to annul an assessment which is alleged to be illegal, null and void.

The New York Life Insurance Company, a New York Corporation, seeks herein to have annulled as illegal and void, an assessment against it for property taxes for the year 1906, made by the Board of Assessors for the Parish of Orleans, State of Louisiana.

The Louisiana Statute requires every taxpayer to make annually in January a written and sworn Return of all the taxable property owned by him in the State. When the Board of Assessors are satisfied that such Return is incorrect or untrue they are given authority to disregard it, and, from the best information they can obtain, to make such assessment of the taxpayer as in their judgment is right and fair. If the taxpayer objects to the assessment thus made by the Board, he must make them a written application to cancel their assessment and adopt his own Return. When the Board refuses this application, the tax payer must then seek relief before the Committee of Review of the City Council, and if that Committee also denies his request for the reduction or cancellation of the Board's assessment, he is then permitted to bring suit against the Board of Assessors to demand the reduction or cancellation of

the assessment complained of. The right to bring this suit is conditioned upon the taxpayer's prior compliance with the statutory requirements. First, to make a written and sworn Return to the Board of his taxable property. Second, to apply to the Board for the relief he claims, and, Third, if the Board refuses such relief, then to apply for it before the Committee of Review of Assessments of the City Council.

On January 25, 1906, complainant made, in proper form, and filed with the Board of Assessors, its written and sworn Return of its taxable property in Louisiana, as follows:

"Money in Possession, on Deposit, or in Hand,	\$1,000.00
Furniture	500.00
	<hr/>
	\$1,500.00"

The Board of Assessors declined to accept the above as a correct Return of complainant's taxable property in Louisiana, and proceeded to enter, in lieu thereof, the following assessment against complainant on the Assessment Rolls for 1906, viz:

"Money loaned on Interest, all Credits and all Bills	
Receivable for money loaned or advanced for	
Goods sold	\$568,900.00
Money in Possession, on Deposit or in Hand,	51,700.00
Furniture	500.00
	<hr/>
	\$621,100.00"

The Board's assessment includes complainant's Return of \$1500 and adds thereto the further sum of \$619,600.

The tax due on the assessment shown by complainant's Return is \$42.00; the tax due on the assessment as made by the Board of Assessors would be \$17,390.80.

The complainant tendered the tax admitted to be due on its own Return (\$42.00) and brought this suit to enjoin the collection of the remainder of the tax \$17,348.80 calculated on the Board's added assessment of \$619,600.

The bill herein, alleges that the complainant complied with the three statutory requirements and then tendered the tax admitted to be due.

It is conceded that these averments are true and that the complainant is, therefore, properly before the court.

The bill then alleges,

First, That the item on the Board's assessment, reading, "Money loaned on interest, all credits, all bills receivable for money loaned or advanced for goods sold, \$568,900," is based wholly on the Board's conclusion that certain arrangements between complainant and its Louisiana Policy holders made complainant the creditor of such Louisiana policy holders in the sum of \$568,900. And it is alleged in the bill or urged in oral argument that this conclusion of the Board was erroneous for two reasons, substantially as follows

a. That the said arrangement were not in fact, or in law, loans by complainant to its Louisiana policy holders but were, in reality, partial and advanced settlements made by complainant with these policy holders pursuant to stipulations in the policies, of sums already earned under the policies, and it is claimed that the terms of these arrangements do no more than provide for crediting the complainant in its final settlement of the policies with the amounts so paid, in advance to the policy holders, and at the same time secured to complainant the right to make this compensation.

b. That the arrangements in question, if held to be loans, were negotiated and made payable in the State of New York, and were evidenced by written instruments always kept in the State of New York and which were never intended to be sent, nor ever, by any business exigency, required to be sent, nor ever, in fact, sent for any purpose, to the State of Louisiana.

Second. The bill alleges that the increase made by the Board in the item reading "Money in possession, on deposit, or in hand, \$51,700" is based on an attempt by the Board to tax money belonging to complainant while in transit or process of remission from Louisiana to New York, the facts being as follows:

Complainant keeps two bank accounts in the City of New Orleans, La., known as *No. 1 Account* and *No. 2 Account*. In *No. 1 Account* are deposited all premiums collected for complainant in Louisiana. Complainant's cashier in New Orleans, mails every evening to complainant in New York, a Statement of the deposits on that day in this account. Complainant's Treasurer in New York on Thursday of each week, draws for the entire amount of the *No. 1 Account*, as shown by the daily statements for the past week.

The deposits in *No. 1 Account*, are, so the bill alleges, solely for the purpose of transmission to New York and no person in Louisiana has, or ever has had, the right to draw against this account or to make use of it for any purpose, and, as a matter of fact the money in this account never has been drawn against or used in Louisiana, and no use has ever been made of the account except for remission to New York in the way just stated.

In *No. 2 Account* money is deposited to an amount never to exceed \$1,000.00 to pay the current expenses and disbursements of the New Orleans office and the cashier in New Orleans has authority to draw on this *No. 2 Account*.

The Board of Assessors insist that complainant is taxable on the *No. 1 Account*, as well as on the *No. 2 Account*, and, accordingly, raised the assessment so as to include the average balances in the *No. 1 Account*, thus making the item now in question, \$51,700 instead of \$1000.

The bill claims that the money in the *No. 1 Account* is money in transit or in process of remission, from Louisiana to New York, and is not taxable in Louisiana.

The answer admits,

First, that complainant is a New York corporation, organized and domiciled as alleged in the bill and generally engaged in the

life insurance business in the manner stated in the bill, and that it has duly paid all license taxes imposed upon it by the Louisiana law.

Second, that the increase in complainant's assessment was made, as alleged in the bill. But the answer insists,

a. That complainant had, within the State of Louisiana, during the year 1906, credits to an amount much greater than \$568,900.

b. "That the amount on deposit in *No. 1 Account* was properly and legally assessed for the reason that it is money in this jurisdiction and enjoys the protection of this Government and is in no wise distinguished from any other taxable property so situated."

It is conceded that complainant has no credits in Louisiana unless such credits if any, as arise from the arrangements between complainant and its policy holders, hereinafter to be considered. And there is no dispute as to the facts of these arrangements.

All the evidence respecting them, was that given by complainants' own officers and witnesses, and no attempt was made to contradict or vary the account of the transactions as given by them.

Under the foregoing pleadings and facts the issues to be decided are,

First, Whether the arrangements between complainant and its policy holders in Louisiana—said arrangements being known as either *Policy Loans* or *Premium Lien Note Loans*—constitute complainant a creditor of the Louisiana policy holders making such arrangements with it, and,

Second, Whether the balances in complainant's *No. 1 Account* in New Orleans, are taxable in Louisiana.

We will now consider the transactions out of which the Board of Assessors assume that credits have arisen in favor of the New York Life Insurance Company and on which they are taxable in Louisiana.

I.

It is admitted and it is moreover proved, that the complainant has no credits of any kind in the State of Louisiana, except such credits, if any, as grow out of those arrangements with its Louisiana policy holders, that are known as either *Policy Loans*, or *Premium Lien Note Loans*. If then these arrangements are not, in reality, *Loans* by complainant to its Louisiana Policy holders, if they are essentially nothing but *Partial and anticipated settlements* by complainant of its ultimate liability under the policies to its policy holders,—then complainant has no credits in any shape in Louisiana on which it can be taxed there.

212 The general and undisputed facts with regard to these two transactions are briefly as follows:

a. *Policy Loans*. When the annual premium stipulated in a policy of life insurance has been paid for a certain number of years the policy is said to have acquired, or to have earned, a *Reserve Value* in favor of the insured. That is, even though the insured should surrender the policy, or should fail to keep it up, he would none the less be entitled to demand that the company pay him a sum representing the *reserve value* of the policy. This reserve is, there-

fore, a fixed and certain sum which the company is bound, in all events, to pay the insured at the maturity of the policy. But ordinarily it cannot be compelled to pay the *reserve value* before the policy matures. The amount of the reserve, at any given date, can always be accurately computed and is in a compound ratio to the amount of the annual premium and the number of years for which the annual premium has been paid.

For the purposes of this case it is not material to consider the principles on which a *reserve value* is allowed to a life policy holder, nor is it material to consider the factors in the calculation by which Actuaries compute the exact amount of this reserve. So far as concerns the matters involved in this suit, it suffices to recognize the fact that after it has been in force for a certain time, every policy does acquire a *reserve value* as above stated, and that this *reserve value* increases steadily from year to year. After a policy has acquired a *reserve value*, the policy holder may obtain the use thereof in either of two ways:

1. A policy holder may not care to pay, or may not see his way to pay, the annual premiums accruing on the policy in the future and may therefore decide to give up the policy altogether and to demand the payment to him of the whole of the *reserve value*. This election would completely and finally terminate the relations between the insured and the company, and would forever cut the insured off from any right to claim further benefits under the policy at its regular maturity.

213 2. If the insured is able and desirous to continue further payments of the annual premium on the policy, and so to keep it in force until it regularly matures, he may, with the consent of the company but not as a matter of absolute right, take down the *reserve value* which the policy has already earned at a given date, under an agreement binding him to credit the company in the final settlement of its liability under the policy when it matures, with the amount so taken down in advance by the policy holder. The company has the right to permit, or to refuse to permit, such anticipated withdrawal by the policy holder, and if it does consent to the withdrawal, it does so on two conditions, viz (a) that the company shall be strictly secured in its right to deduct in the ultimate settlement of its liability under the policy, the amount of the reserve, so paid in advance of maturity, to the policy holder. The most effective way to secure this right is by requiring the policy holder to deposit the policy in the hands of the company with the agreement consenting to the company's crediting the advance payment in its final settlement. This delivery of the policy into the company's possession is naturally and not improperly spoken of as a *pledge*.

(b) That the interest earning capacity of the fund from which the *reserve value* is taken shall not be diminished by such anticipated payment.

In the operation of all insurance companies, the amount of the annual premiums charged, the results promised by the companies to their policy holders, and the provision of a fund out of which the policies are eventually to be paid at maturity, are based upon calcu-

lations as to the total fund which will be accumulated from payments of annual premiums and from the interest that will be derived from the investment of these annual premiums as paid and the re-investment of this interest when earned, and so on. These calculations assume that all the premiums paid, will constitute an interest earning fund. Obviously then the calculations should be vitiated, and the results would be less than computed, if parts of the premium

fund were used to pay earned *reserve values* and thus withdrawn from the interest earning fund. But this error can be avoided if the persons withdrawing earned *reserve values* and yet continuing their policies in force are required to pay annually to the company the same sum which the amount withdrawn by them would have earned as interest if it had not been paid to them. It is estimated that this fund from which the *reserve values* are taken, earns an average interest of 5% per annum. In order, therefore, that the final result may not be impaired, the policy holder who takes down the earned *Reserve value* of his policy before its maturity must pay a sum equal to 5% per annum interest on the amount which he thus takes down. This additional payment may be called interest, or it may be called an additional premium. As a matter of fact, it is essentially an additional premium, paid by the policy holder in order to obtain the privilege of drawing down the earned *reserve value* of his policy.

It is thereafter treated strictly as a part of the premium. The company requires payment of this additional sum on the same day on which the original premium is paid. The same notice is sent by the company to the policy holder to remind the latter of the approaching advent of the day on which the premium and the additional sum will become due; and failure to pay this additional sum is attended by the same consequences which attend the failure to pay the original premium.

As I have just stated, the company is not ordinarily under any obligation to pay to a policy holder the earned *reserve value* of a policy until the policy matures in any of the ways stipulated by its terms, and there is a complete and final settlement of the company's entire liability under the policy. But the company may, and in many cases does, consent to make this anticipated payment. Before doing so, however, it appears that the company considers the facts of each case. The title to the policy may have become involved so that it may be questionable who has the legal right to demand and receive the anticipated payment and to agree that it shall be used as a credit

to the company in its final settlement under the policy. Or it may be that the policy is one which, for business reasons, the company would desire to be relieved from, and in this situation it would not care to give any assistance to the policy holder which might enable him to keep it up. And there may be other business reasons why the company in a particular instance would be unwilling to assist the policy holder by consenting to pay in advance the earned value of the policy. Accordingly, in every instance except in the policies in which there is a contractual agreement to permit the policy holder to take down the earned value whenever he desires, the

policy holder must apply to the company for its consent to the arrangement and must make the arrangement, if at all, on the terms dictated by the company as the conditions of its consent.

The arrangements above described are called *Policy Loans*. This name is from every point of view a misnomer. The transaction is not a loan at all, it is merely a consent by the debtor to pay in advance of the maturity of the debt which he owes, and to pay under conditions which the protection of the debtor's business requires. The personal solvency or desirability of the policy holder as a borrower is not considered at all; but only the sum that the policy has already and certainly earned for the policy holder through the premiums already paid in. No matter how solvent a policy holder may be he cannot, under the *Policy Loan* obtain from the Company more than the *reserve value* already earned by his policy. No matter how insolvent he may be, if the arrangement is made with him, he will get the amount of the *reserve value*. Neither is the policy holder under any obligation on thus obtaining the *reserve value* of his policy to repay that amount at any time to the company. His only obligation is, to pay an additional premium equal to 5% on the *reserve value* drawn down, and to credit the company with the *reserve value* paid to him, in the final settlement between himself and the company.

It may be further noted generally, with regard to the so-called *Policy Loan* arrangements, as just described, that it is provided that the policy holder may, if he wishes, return to the company the *reserve value* which he has taken out and on such return his
216 obligation to pay the additional sum equal to 5% of the *reserve value* taken out at once ceases. But, if it is not convenient to the withdrawing policy holder to make this return he cannot be compelled to do so, but may keep the money so paid him until the policy matures and then simply credit it on the total amount of the company's ultimate liability under the policy.

Further, some policies contain statements printed in the policy or endorsed on them, showing the amount of the *reserve value* from year to year, and giving the policy holders the right to claim such *reserve value* on the terms above stated. In other policies there is no such statement and the policy holder has no right to claim such *reserve value*, and in every such case where the policy holder applies for the benefit of the *reserve value* it is necessary to require the company's actuary to calculate the amount of the *reserve value*.

The real nature of the *Policy Loan* arrangements is clear enough, if regard be had only to the facts of the situation. It has been greatly obscured, however, by the terms used by the company to designate it. In hereafter referring to the arrangement of a *Policy Loan* I do not mean to intimate that it is a loan at all. I merely designate by this name the arrangement between the policy holder and the company whereby the policy holder gets immediate use and control of the earned *reserve value* of the policy.

The only evidence in the record, as to the conditions and terms under which, and the manner in which, the arrangements known as *Policy Loans* are made by the company with its policy holders, is

that given by the complainant's officers. The defendants have made no effort to contradict, or qualify, in any particular, the testimony of these witnesses which may therefore, be accepted as accurately stating the facts.

Mr. John C. McCall, the Secretary of the New York Life Insurance Company, testifies:

"Loans made by the company to policy holders in Louisiana are made because the policy holders hold policy contracts, and have paid in cash premiums enough to create a *reserve* which makes their policy contracts *adequate security for the loans*, and because they have made application to the company for such loans, and the Division of Policy Loans, on investigating the policy and the title to it, was satisfied the policy as a pledge would adequately secure the repayment of the loan.

"Some policy contracts provide for loans. Some do not. As a rule, the company will make a loan on the security of any policy *upon which premiums in cash have been paid so as to create a reserve* which will fully secure the repayment of the amount of the loan applied for whether the policy provides for loans or not." (Page 27.)

Mr. George C. Newton, Superintendent of the Division of Policy Loans, testifies regarding these arrangements as follows:

"The functions of the Division (of Policy Loans) are to receive and consider applications for such loans to accept or reject them, and if it accepts them, to cause the *loan contract* to be properly executed, and to accept the delivery thereof and receive the policy in pledge as security for the repayment of the loan, to pay to the borrower the proceeds of the loan, and to transmit the loan contract and the pledge security to the Company's Division of Policy Loan Securities, when the loan transaction is completed." (page 2)" * * *

"The company commenced to make loans on policies in 1892 and has made loans of that kind from 1892 until the present time. Most of the company's policies ever since 1892 have contained an agreement under which the policy holder may obtain from the company a cash loan on the sole security of the policy, on written request at any time after the policy has been in force a specified number of years, if premiums have been paid to the anniversary of the insurance next succeeding the date when the loan might be obtained, the insured to pledge the policy and its accumulations as collateral security for the loan in accordance with the terms of the company's form of loan agreement; the policy in most cases stating the amount of loan available at any given time, and requiring that the loan should bear interest at the rate of 5% per annum payable in advance. * * *" (Page 5.)

"It has never been the practice of the company to and it never has asked the policy holder to pay a loan as long as his policy continued in force and he paid his interest according to the terms of the loan agreement. It never sent a policy loan agreement into the State of Louisiana for collection and does not expect to do so. It never collected the amount of a loan and does not contemplate doing so on any policy made to any policy holder in the State of Louisiana by

legal process either in the State of Louisiana or elsewhere. *The company never has made a loan unless it had in its own possession on account of the value of the policy acquired by the payment of premiums thereon in in cash ample value as security for the loan.*" (page 22.)

"Q. In making loans on policies you may state, if you know, on what the company places its reliance for their final payment?"

"A. It relies *solely* for the payment of such loans upon the *reserve value* of the policy which is pledged as security for the loan. The *financial responsibility of the policy holder* is never an element that enters into the company's consideration in making such loans or in dealing with them." (pages 23-24.)

The foregoing extracts sufficiently show that the question in every application for the *Policy Loan* is, whether the company will consent to pay the policy holder, in advance, the then earned *reserve value* of the policy.

When the Policy holder has made application for the so called *Policy Loan*, and the company has agreed to allow his application, the next step is for the policy holder to execute what is known as the *Policy Loan Agreement*. That document reads as follows:

218

"Policy Loan Agreement."

Whereas, the undersigned have this day duly received from the New York Life Insurance Company ——— dollars (\$ — —), in cash, as a loan upon Policy No. ——— issued by said company on the life of ———. Therefore,

In consideration of the premises, the undersigned hereby agrees as follows:

1. To pay said company interest on said loan at the rate of five per cent. per annum, payable in advance from this date to the next anniversary of said policy, and annually in advance on said anniversary and thereafter.

2. To pledge, and do hereby pledge, said policy as collateral security for the payment of said loan and interest, and herewith deposit said policy with said company at its Home Office.

3. To pay said company said sum when due with interest, reserving, however, the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

4. That said loan shall become due and payable—

(a) Either if any premium on said policy or any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by said company by deducting the amount due on said loan from the reserve on said policy computed according to the American Experience Table of Mortality and interest at the rate of four and one-half per cent. per annum; and if after said deduction there is any balance of said reserve as so computed, said balance shall be taken as a single premium of life insurance at the published rates of said company at the time said

policy was issued, and shall be applied to purchase upon the life of the insured under said policy, at the age of said insured on said due date, paid-up insurance for such amount as said balance will buy, payable under the same conditions as the original policy, but without premium return, participation in profits or further payment of premiums;

(b) Or, (1) on the maturity of the policy as a death claim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the completion of any Tontine or Accumulation dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

5. That the application for said loan was made to said company at its Home Office in the City of New York, was accepted, the money paid by it, and this agreement made and delivered there; that said principal and interest are payable at said Home Office, and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said company.

In witness whereof, the said parties hereto have hereunto set their hands and affixed their seals this — day of —, — 190—.

— [L. S.]
— [L. S.]
— [L. S.]

Signed and sealed in presence of

Forwarded from — Branch Office, Prem. paid in full to —.

—, — 190—.

B. N. 8—.

— Cashier."

The foregoing Agreement recites that the policy holder has received a stated sum of money as a loan upon a given policy issued by the company, and that in consideration thereof, the policy holder agrees to pay annually, in advance, 5% per annum interest on the amount of said sum, to pledge his policy as collateral, to secure the payment of the loan and interest, and, finally, to pay said company said sum *when due*. And then the Agreement goes on to declare that said loan shall become due and payable (1) on the failure to pay any annual premium, or the above stated interest, when due;

(2) when the policy matures. That is, the so called Loan Agreement expressly provides that the so-called loan shall not be due until the policy matures in one of the ways provided for by its terms, and the so-called loan is then under the very terms of the Loan Agreement, to be paid by crediting the amount of the so called loan on the company's eventual liability under the policy when matured.

The stipulation contained in the Loan Agreement, thus demonstrates that the transaction is not a loan, but is a partial payment by the company on account and in reduction of its eventual liability.

As long as the 5% interest on the payment is made by the policy

holder, under the very terms of the loan Agreement, he cannot be required to repay the principal, and, as the stipulation shows, the sum charged as interest is, in reality, an additional premium which is necessitated by the reasons hereinabove stated.

Mr. McCall testifies:—

"Notice of interest due on such loans, as well as on *premium lien note loans* is made up in the Comptroller's Department in the Home Office at the same time with, and as a part of the notice of premium and is sent by mail to the policy holder at least fifteen, and not more than forty-five days before the due date of the premium and interest, the interest on all loans being made payable the due date of the premium. * * * The receipt of the premium and interest at the Home Office, the company treats as a continuation of the loan and never takes any formal action in respect of renewal. If the premium or interest is not paid when due, the loan is foreclosed at the Home Office." Pages 25-26.

Mr. John J. Mahoney, chief clerk in the Note Division of the Comptroller's Department of the New York Life Insurance Company, says, on the same subject:—

"The amount of interest due on the anniversary of the policy is made a part of the premium notice that the company sends out before the premium becomes due and the interest is collected with the premium. * * * If, however, default is made in payment of interest on the note it has always been the company's practice to, and it does, thereupon satisfy the debt evidenced by the note at the Home Office of the company by deducting the amount of it from the value of the policy." Page 9.

And on page 10, he says:—

"Subsequent interest payments are not endorsed on the note but are endorsed on the company's premium card in the Comptroller's Department."

Mr. Norton testifies:—

"My Division figures the interest on policy loans which will be due on the due date of the premium and sends a memorandum thereof to the Comptroller's Department. That Department before the maturity of the premium makes up a notice to the policy holder showing the amount of premium and interest that will be due, the due date thereof, and advising the policy holder that the premium is payable at the Home Office, but usually also authorizing him to pay it to the cashier of the branch office in his vicinity. If the policy holder pays the premium he usually also pays the interest, and both are paid either by remitting directly to the Home Office, where it is received in the Comptroller's Department, or if they pay to the office in their vicinity it is reported each day by that office to the Comptroller's Department, and drawn out of the Company's No. 1 bank account by the Treasurer's Department on Thursday of each week." Page 29.

It is shown by the evidence that the non-payment of the so-called interest on *Policy Loans* has the same effect in terminating the policy that the non-payment of the premium itself has.

Mr. Newton testifies—

"If *interest* on the loan was not paid when due or the policy lapsed for the non-payment of *premium* it was the duty of my division to and we did foreclose the loan in the manner described in the loan Agreement and sent a letter to the policy holder advising him of the foreclosure." Page 14.

These notices are in the testimony and show that the policy holder is informed by them that—

"The *premium* and *interest* due on said policy on the — day of — 190—, not having been paid, the principal of said loan became due, and settlement of said indebtedness has been made in accordance with the terms of the policy, which is returned enclosed, endorsed for — years and — months Continued Insurance.

Yours truly." Page 15.

The so-called foreclosure is simply treating the policy as matured, just as it would be by the non-payment of a premium, by death, or by the expiration of a Tontine period, or by the effect of any other condition in the policy. On this assumption the policy holder has various options as to what shall be done with the balance due him under the policy treated as matured, remaining after crediting the company with the advance payment. The policy holder may apply the balance remaining to his credit on the matured policy, either in purchasing paid up insurance, or in paying for continued insurance, or he may take the balance down in cash.

To me it is very clear that this entire transaction called the *Policy Loan* is not, in any respect, a loan but is an anticipated settlement made with the consent of the company, and based upon the earned value of the policy at the date of the so-called *Policy Loan*.

222 In other words it is a mere incident and modification of the original contract of insurance on the life of the policy holder.

The insurance company acquires no *credit* under this arrangement other than the maker of a promissory note would acquire if he made a partial payment upon that note before its maturity.

I therefore hold that the *Policy Loan* arrangements do not establish any credits in favor of the insurance company on which the insurance company can be taxed, either by the laws of Louisiana, or by the laws of any other State.

II.

Premium Lien Note Loans.

The so-called *Premium Lien Note Loan* is merely a modification of the *Policy Loan* arrangement and is based upon the existence of the same *reserve value* earned by the policy through the cash premiums which have been paid upon it for a given number of years.

The policy holder is permitted to make use of this reserve for paying the premiums on his policy under, essentially, the same conditions which apply to the *Policy Loan* contracts hereinabove considered.

Mr. Mahoney in charge of the department that issues the *Premium Lien Note Loans* testifies about them as follows:

"The complainant has never taken a premium lien note except from a policy holder in settlement in whole or in part of a renewal premium, nor has it ever taken such note except in settlement in whole or in part of a renewal premium on a policy upon which enough premiums had theretofore been paid in cash to create a reserve on the policy equal to or greater than the amount of the premium lien note. Under certain forms of policies and where the policy had acquired by payment of premiums in cash a reserve equal to or greater than the note, the company has sometimes accepted from the policy holder a premium lien note in settlement in whole or in part of a premium when the policy holder could not or would not pay the premium in cash." Page 4.

In acting on such application we have always considered the form of the policyholder's policy contract, the number of premiums that have been paid in cash, and ascertained and considered the reserve value of the policy, and if in view of all these things we were satisfied that the company could safely accept a premium lien note in settlement in whole or in part of the premium, and in all other respects the transaction was such that the company deemed it

desirable to accept the premium lien note, we then in my
223 division filled in the company's customary form for premium lien note with the dates, amount and other data in the blanks left in the form for that purpose. (Page 5). * * * "if, however, on considering the application in the Note Division it was ascertained that the policyholder's policy was one in respect to which the company did not care to accept a premium lien note, or the cash premiums had been insufficient to create the required reserve, if the risk was believed to be impaired, or if, for any other reason, we concluded that it would not be advisable to accept a premium lien note, we then and there declined the application. (Page 6).

And again—

"Q. In accepting such notes on what does the company place its reliance for their final payment?"

"A. It relies for their final payment solely upon the reserve value of the policy which of course is in the company's own possession and control at its Home Office in the City of New York. The financial responsibility of the maker thereof is never an element considered by the company in determining whether or not we will accept such note."

"Q. You may state whether or not the company has ever demanded payment of any such notes?"

"A. It never has. It never accepts such a note unless it has in its own possession money held for the ultimate benefit of the policy holder with which to pay it." (Page 8).

And with regard to the interest carried by these *Premium Lien Notes* (the same as the interest carried by the *Policy Loans*) Mr. Mahoney says:

"If, however, default is made in payment of interest on the note it has always been the company's practice to, and it does, thereupon satisfy the debt evidenced by the note at the Home Office of the

company by deducting the amount of it from the value of the policy.

"The amount of interest due on the anniversary of the policy is made a *part* of the *premium notice* that the company sends out before the premium becomes due and the interest is collected with the premium. Both the premium and the interest are payable at the Home Office in New York City, but ordinarily the company in the premium notice authorizes the policy holder to pay either directly to the Home Office or at the company's local office." (Page 9.)

224 The *Premium Lien Note* reads as follows:

"Premium Lien Note.

\$—.

—, 190—.

—, after date I promise to pay to the order of the New York Life Insurance Company at the office of said company in the city of New York, with interest in advance at the rate of five per cent. per annum (for value received); being for premium due — on Policy No. — issued by said company on the life of —. It is understood and agreed:

1. That this note may be renewed, if the interest thereon and subsequent premiums on said policy are duly paid.

2. That if any premium on said policy, or interest on this note, is not paid when due, this note shall thereupon immediately become due and payable, with interest, and shall, without notice of any kind, be paid by deducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due, the *the* balance only of said sum, if any, to be available for the purchase of insurance under and pursuant to the non-forfeiture provision of said policy.

3. That in the settlement of any claim or any benefit under said policy before this obligation shall have been fully paid the amount of this note shall be deducted from the amount otherwise payable by said company.

Signature of the person whose life is insured.

Signature of the person or persons for whose benefit the Insurance is effected."

It will be observed that while the date of payment is given in the *Premium Lien Note*, yet it is expressly stipulated that if the interest and subsequent premiums on the policy, are paid the note shall be renewed, and that the note shall only become due if subsequent premiums, or interest, are not paid. And the note contains provisions for offsetting the amount of the note in the Final settlement of the policy.

These *Premium Lien Note Loans*, are, in all substantial respects, the same as the *Policy Loans*, merely evidencing a condition of the

arrangement for giving the policy holder the immediate use of the earned value of the policy under the obligation to allow it as
 225 a credit to the company in the eventual settlement of the policy.

Finally, the company issues a few *Blue Notes*, as they are called, which are merely extensions of time for paying premiums when the policy holder is unable to pay them at their maturity. These notes are given simply to evidence an agreement of the company to extend the time for paying the premium, and they contain a clause that if the note is paid in full by the extended date given on the face of the note, the policy shall continue in force; but, "That if this note is not paid on or before the day it becomes due, it shall thereupon automatically cease to be a claim against the maker," and the policy lapses. These instruments are clearly not credits, but mere agreements to extend the time for paying the premiums.

I therefore find, under the facts above stated, that the complainant company has no credits, of any kind whatever, in the State of Louisiana, and the injunction against the collection of the tax on the assessment of \$568,900 must therefore issue.

II.

With regard to the attempt of the assessors to include in their assessment the average balances in *No. 1 Bank Account* in New Orleans, the evidence establishes conclusively that the collections for complainant in Louisiana are deposited in this Account solely for transmission, and that they are not used, or drawn against, by any person in the State of Louisiana. It certainly could not be contended, that if these collections were at once invested in New York Exchange, without being put in bank, at all, they would become subject to taxation.

That money deposited in bank in one State solely for transmission through such bank to another State is not taxable in the State in which the bank is located was expressly decided in *Metropolitan Life Insurance Co. v. Newark*, 62 N. J. L. 74, and that decision seems to me to state the law correctly. The cases in Louisiana which have held that deposits in bank to the credit of a non-resident are
 226 deposits were controlled by some agent of the depositor in Louisiana, and were used for the purposes of the depositor's business in Louisiana.

Clason v. La. 46A.

Bluefields Banana Co. v. Assessors, 49A, 43.

Parker v. Strauss, 49A, 1173.

In this case it is shown that the complainant's *No. 1 Account* is not controlled by any agent of complainant in Louisiana and is not used to the slightest extent on any occasion for any purpose of complainant's business in Louisiana.

I therefore hold that the increase of the assessment from \$1,000,000 as returned by the complainant, to \$51,700 as made by the Assessors so as to include in the assessment the average balances in *No. 1 Bank*

Account is illegal, and that the injunction should issue as prayed for by complainant, restraining the collection of taxes on this item of the assessment made by the Board of Assessors.

In conclusion it may be said that it would be most unfortunate for Louisiana if her laws did authorize, or attempt to authorize the taxation sought to be imposed in this case. It would be equivalent to exacting a tax of nearly 3% on the premiums as they were collected and remitted from the State, and a similar tax on sums paid under the policy. It would deprive the policy holders of the right to obtain any advantage from their policies before maturity, unless they consented to being taxed 3% on the amounts collected before maturity, for it is not conceivable that the company will consent to bear this tax on anticipated payments to its policy holders which it makes solely for their accommodation. And it may with equal confidence be assumed that if the State taxes the Premiums paid by its citizens and remitted to the complainant, it will become necessary for the complainant to devolve the ultimate payment of this tax on the policy holder. The net result of the scheme of taxation asserted by defendants would be to compel citizens of Louisiana to pay 3% more for premiums on their life insurance, and to get 3% less from their policies than citizens of other States. For if the State can legitimately levy a tax of 3% on partial and anticipated payments by the company under the policy, it can on the same principle levy the same tax on the entire and final payment of the policy.
227 and that will no doubt be the next move. The final payment is a *credit* in the same sense as the provisional and partial payments, and one is as taxable as the other.

While it is not necessary, under the view I take of this case, to decide whether the complainant would be taxable on its *Policy Loans*, even if they were loans in a legal sense, I may say that, in view of the manner in which these so-called loans are negotiated and in view of the fact that they are evidenced by written instruments held always in New York and there settled, I do not think the complainant would in any case be taxable in Louisiana with respect to them. The facts as to the arrangements are accurately as stated in the bill.

It is urged that in the case of the *Metropolitan Life Ins. Co. vs. New Orleans*, 115 La. 708, affirmed by the Supreme Court of the United States in 205 U. S. 395, it was held that a life insurance company organized and domiciled in New York was taxable in Louisiana on *Policy Loans* made in the latter State.

But it does not appear from the report of the case that the arrangements, described as "Policy Loans," in the case cited, were the *same arrangements* as are described by that name in this case. The terms of the obligations are not recited in the opinion of either court, and it seems to have been assumed and conceded, and for aught that appears to the contrary, it may have been the fact, that the 'Policy Loans' in the Metropolitan case may have been loans in the ordinary sense. It is certainly to be presumed that if the *Policy Loans* in that case had been the arrangements which the 'Policy Loans' of the complainant are shown to be in this case, that fact would have been called to the attention of the court. In the

Metropolitan case the court dealt with the '*Policy Loans*' before them as if they were ordinary loans, and I am bound to assume they were. But the '*Policy Loans*' in this case are not ordinary loans, nor loans in any sense.

Judgment will be for the complainant as prayed for.

228

Decree.

Filed January 11th, 1908.

Circuit Court of the United States, District of Louisiana, New Orleans,
Louisiana.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY

VERSUS

BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS ET ALs.

This cause came on at this term for final hearing on the Bill of Complaint, and the answer of the defendants. The Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector of the First District of the City of New Orleans and Otto F. Briede, Treasurer of the City of New Orleans, and the replication and exhibits, proofs and testimony and was argued by the Counsel for the respective parties and was submitted to the Court and taken under advisement;

Whereupon and upon consideration of the testimony, the exhibits, and the written agreements filed herein and for the reasons assigned in the written opinion of the Court on file the Court finds that the Equity in this case is with the Complainant as against the said defendants, the said Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector of the First District of the Parish of Orleans, and Otto F. Briede, Treasurer of the City of New Orleans; and that the said New York Life Insurance Company is entitled to the relief for which it prays as against them.

It is therefore ordered, adjudged and decreed by the Court that the item in the assessment of the New York Life Insurance Company, the complainant herein by the Board of Assessors for the
229 Parish of Orleans for the year 1906, and reading "Money

Loaned on interest all credits and all bills receivable for money loaned or advanced for goods sold \$568,900" is hereby decreed to be illegal, null and void and the defendants herein to-wit: the said Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector of the First District of the Parish of Orleans and Otto F. Briede, Treasurer of the City of New Orleans, their agents, deputies and representatives, their successors in office and the several successors in office, of each of them, are perpetually enjoined from attempting to collect any taxes State or Municipal based on said assessment and from collecting or attempting to collect said

illegal portion of said taxes or any part thereof or from ever asserting any claim or right to collect same.

And it is further ordered, adjudged and decreed that the increase made by the Board of Assessors for the Parish of Orleans in the item reading "Money in possession, on deposit or in hand" from \$1,000 to the sum of \$51,700 for the purpose of including in said item the assessment of the amount deposited in No. 1 account of the said New York Life Insurance Company, complainant herein, in the Whitney Central National Bank, for the year 1906, is also decreed to be illegal null and void and the defendants herein to-wit:—the said Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector of the First District of the Parish of Orleans, and Otto F. Briede, Treasurer of the City of New Orleans, their agents, deputies and representatives, their successors in office of each of them, are therefore perpetually enjoined from collecting or attempting to collect any tax based upon the said increase of \$51,700 in said item over the sum of \$1,000 as returned by the said complainant herein, or from collecting or attempting to collect said illegal portion of said taxes or any part thereof or from ever asserting any claim of right to collect the same.

230 It is further ordered, adjudged and decreed by the Court that the Twenty-two Dollars (\$22.00) which the New York Life Insurance Company brought into Court and tendered to the said defendant Otto F. Briede, Treasurer of the City of New Orleans, is in full payment of all unpaid taxes, due or payable by the New York Life Insurance Company on account of said assessment and levy for the year 1906, and that the same be so received by said Otto F. Briede, and that the Board of Assessors for the Parish of Orleans, John Fitzpatrick, State Tax Collector of the First District of the City of New Orleans, and Otto F. Briede, Treasurer of the City of New Orleans pay all the costs herein made.

January 11, 1908.

(Signed)

EUGENE D. SAUNDERS, *Judge*.

231

Petition for Appeal.

Filed February 25, 1908.

The Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

No. 13,428.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

BOARD OF ASSESSORS ET ALS., Respondents.

The above named respondents, conceiving themselves aggrieved by the decree made and entered on the 11th day of January 1908, in the above entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons

specified in the Assignment of Errors which is filed herewith and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this — day of February A. D. 1908.

(Signed)

SAM'L L. GILMORE,

City Attorney, Solicitor for City of New Orleans,

H. G. DUPRE,

Asst City Atty, Solicitor for City of New Orleans,

GEO. H. TERRIBERRY,

Solicitor for Board of Assessors, Parish of Orleans,

Solicitor for John Fitzpatrick, State Tax Collector,

First District, City of New Orleans.

The foregoing claim of appeal is allowed.

Dated this 25th day of February A. D. 1908.

(Signed)

EUGENE D. SAUNDERS,

Dist Judge.

232

Assignment of Errors.

Filed Feb. 25, 1908.

The Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

No. 13428.

NEW YORK LIFE INSURANCE COMPANY, Complainant,

vs.

BOARD OF ASSESSORS ET ALS., Respondents.

Assignment of Errors.

First. That the Court erred in holding that "the Policy Loan arrangements do not establish credits in favor of the insurance company on which the insurance company can be taxed, either by the laws of Louisiana or by the laws of any other State."

Second. That the Court erred in finding "that the complainant company has no credits, of any kind whatever, in the State of Louisiana."

Third. That the Court erred in holding that "the injunction against the collection of the tax on the assessment of \$568,900.00 must issue."

Fourth. The Court erred in holding that "the increase of the assessment from \$1,000.00, as returned by the complainant to \$51,700.00 as made by the Assessors so as to include in the assessment the average balances in *No. 1 Bank Account* is illegal."

Fifth. The Court erred in holding that the injunction should

issue as prayed for by the complainant restraining the collection of taxes on the item of assessment, "cash on hand, money in bank, etc., in *No. 1 Bank Account*.

Sixth. That the Court erred in decreeing that the item in the assessment of the New York Life Insurance Company by the Board of Assessors for the Parish of Orleans for the year 1906 and reading "Money loaned on interest, all credits, and all bills receivable for money loaned or advanced for goods sold \$568,900, to be illegal, null and void."

Seventh. That the Court erred in issuing the perpetual
233 injunction against the "respondents, their agents, deputies, and representatives, their successors in office and the several successors in office, of each of them, from attempting to collect any taxes, State or municipal, based on said assessment and from collecting or attempting to collect said taxes or any part thereof or from ever asserting any claim or right to collect same."

Eighth. That the Court erred in adjudging and decreeing that the increase made by the Board of Assessors for the Parish of Orleans in the item "money in possession, on deposit or in hand" from \$1,000 to the sum of \$51,700 for the purpose of including in said item the assessment of the amount deposited in *No. 1 Account* of the said New York Life Insurance Company.

Ninth. That the Court erred in perpetually enjoining respondents, their agents, deputies, representatives, their successors in office, of each of them, from collecting or attempting to collect any tax based upon the said increase of \$51,700, in the said item *No. 1 Account* over the sum of \$1,000 as returned by the complainant, or from collecting or attempting to collect any part of said taxes or from ever asserting any claim or right to collect same.

Tenth. That the Court erred in decreeing that the Twenty-two Dollars which complainant brought into court and tendered to respondents is in full payment of all unpaid taxes due or payable by complainant on account of said assessment and levy for the year 1906 and that the same be so received by respondents.

Eleventh. That the Court erred in finding that respondents should pay all costs herein made.

The respondents pray that the order and decree maintaining the injunctions and finding for complainant may be suspended pending the appeal.

(Signed)

GEO. H. TERRIBERRY,
Solicitor for Board of Assessors;
SAM'L L. GILMORE,
City Attorney;
H. G. DUPRE,
Asst City Attorney,
Solicitors for City of New Orleans,

234

Bond of Board of Assessors et al.

Filed February 25, 1908.

Know all men by these Presents, That we Board of Assessors Ph. of Orleans, the City of New Orleans & John Fitzpatrick, Tax Collector as principals, and Geo. H. Terriberry as surety are held and firmly bound unto The New York Life Insurance Company in the full and just sum of Four Hundred & no 100 (\$400.00) Dollars to be paid to the said New York Life Insurance Company its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 25th day of February in the year of our Lord, one thousand nine hundred Eight.

Whereas lately at a Session of the United States Circuit Court Fifth Judicial Circuit holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between The New York Life Insurance Company Complainant and The Board of Assessors, The City of New Orleans, and John Fitzpatrick, Tax Collector Defendants, No. 13428 of the Docket of said Court, in Equity a decree was rendered against the said defendants, The Board of Assessors, The City of New Orleans, and John Fitzpatrick, Tax Collector, and the said defendants having obtained . . . and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said New York Life Insurance Company citing and admonishing it to be and appear before the United States Supreme Court for the Fifth Circuit, to be holden at Washington, District of Columbia, within 30 days from the date thereof.

Now the condition of the above obligation is such, That if the said defendants aforesaid shall prosecute this appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full
235 force and virtue.

Sealed and delivered in presence of —

(Signed) H. J. CARTER.

CITY OF NEW ORLEANS. [SEAL.]

BOARD OF ASSESSORS. [SEAL.]

JOHN FITZPATRICK. [SEAL.]

*Tax Collector.*GEO. H. TERRIBERRY, *Surety.*

Approved by —

(Sig.) EUGENE D. SAUNDERS.

Judge, E. Dist. of La.

236 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the New York Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition & order for Appeal filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein the Board of Assessors of the Parish of Orleans, the City of New Orleans and John Fitzpatrick, State Tax Collector of the First District, Parish of Orleans, are Appellants and you are appellee to show cause, if any there be, why the judgment rendered against the said Board of Assessors of the Parish of Orleans, the City of New Orleans and John Fitzpatrick, State Tax Collector of the Parish of Orleans, First District, as in said Petition for Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 2nd day of March, in the year of our Lord one thousand nine hundred and eight,

EUGENE D. SAUNDERS, *Judge*.

237 [Endorsed:] 1820. 4. Return. E. United States Circuit Court, Eastern District of Louisiana. No. 13428. New York Life Insurance Co. vs. Board of Assessors *et al.* Citation of Appeal. Marshal's Return. No. —. U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 6, 1908. H. J. Carter, Clerk. Received by U. S. Marshal, New Orleans, La. March 2 08.

On this 6th day of March, 1908, before the undersigned authority personally appeared B. F. Queen, Deputy U. S. Marshal for the Eastern District of Louisiana, known to me as such, who being duly sworn deposes and says that he, affiant, did on the 5th day of March, 1908, serve this writ on the New York Life Insurance Company by handing the same to Mr. Charles S. Rice of the law firm of Rice and Montgomery, attorneys of record for the New York Life Insurance Company by handing the same to him in person, in the City of New Orleans, La.

B. F. QUEEN,
Deputy U. S. Marshal.

Sworn to and subscribed before me on this 6th day of March, 1908.

[Seal Henry J. Carter, United States Commissioner, Eastern District of Louisiana.]

H. J. CARTER,
U. S. Commissioner.

238 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Henry J. Carter, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, Do hereby certify, that the foregoing 237 pages contain and form a full complete, true and perfect transcript of the Record and Proceedings had, and Assignment of Errors together with all the evidence adduced on the trial of the case of The New York Life Insurance Company *versus* The Board of Assessors for the Parish of Orleans; Otto F. Briede, Treasurer of the City of New Orleans, and John Fitzpatrick, State Tax Collector, 1st District of the City of New Orleans, No. 13,128 of the Docket of the said Court.

Witness my hand and the seal of said Court, at the City of New Orleans, this 30th day of March, A. D. 1908.

[Seal U. S. Circuit Court for the 5th Circuit, Eastern District, La.]

H. J. CARTER, *Clerk*.

I, Eugene D. Saunders, United States Judge for the Eastern District of Louisiana, do certify, that Henry J. Carter, whose name is signed to the above certificate as Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, was, at the time of signing said certificate, and is now the Clerk of said Court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such Clerk.

Given under my hand, at the City of New Orleans, in said district this 30th day of March, A. D. 1908.

EUGENE D. SAUNDERS, *Judge*.

Endorsed on cover: File No. 21,089. E. Louisiana C. C. U. S. Term No. 112. The Board of Assessors of the Parish of Orleans, The City of New Orleans, *et al.*, appellants, *vs.* The New York Life Insurance Company. Filed April 2d, 1908. File No. 21,089.



OFFICE OF THE CLERK OF THE DISTRICT COURT

No. 112

THE BOARD OF ALDERMEN FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS
ET AL.

APPELLANTS

VERSUS

NEW YORK LIFE INSURANCE COMPANY,

APPEELED FROM

~~Case No. 112, District Court, New Orleans, La.~~

Appeal from the District Court of the United States for
the District of Louisiana.

JOHN B. TERRY, JR.,

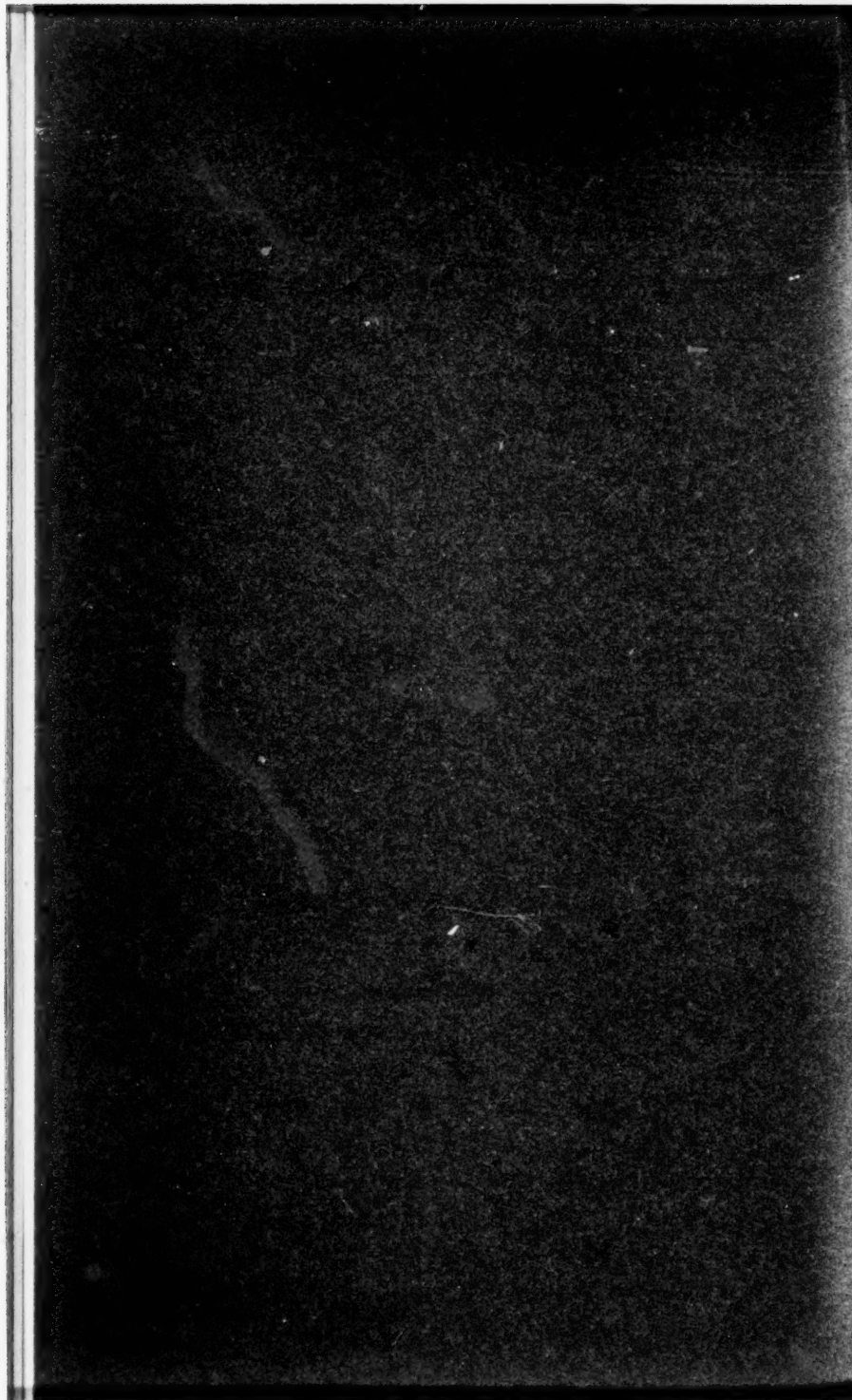
Attorney for Appellants

OF NEW YORK AND NEW JERSEY

Attorneys for Appellants

WILLIAM F. TERRY,

Attorney for Appellants



Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 112.

THE BOARD OF ASSESSORS FOR THE PARISH OF
ORLEANS, THE CITY OF NEW ORLEANS

ET AL.,

APPELLANTS-DEFENDANTS,

VERSUS

NEW YORK LIFE INSURANCE COMPANY,

APPELLEE-COMPLAINANT.

SUPPLEMENTAL BRIEF FOR APPELLANTS.

*Appeal From the Circuit Court of the United States for
the Eastern District of Louisiana.*

JURISDICTION.

On the argument of this cause it was suggested by some of the members of the Court that there was no jurisdiction.

Although the appeal had been taken something over two years ago, counsel for appellee did not move to dismiss for want of jurisdiction, and, indeed, at the opening

of his argument, counsel for appellee suggested that the cause was one of great and unusual importance to insurance companies, and it was hoped that this Court would decide the questions involved and thus conclude the matter.

To determine whether or not the Court has jurisdiction, it is proper to reproduce Section 5 of the Act of Congress of March 3, 1891, and to quote from the pleadings and from the opinion of the trial Court such averments and findings as bear thereon.

Section 5 of Act of March 3, 1891:

"Sec. 5. That appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts direct to the Supreme Court in the following cases:

"1. In any case in which the jurisdiction of the Court is in issue: in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision.

"2. From the final sentences and decrees in prize causes.

"3. In cases of conviction of a capital or otherwise infamous crime.

"4. In any case that involves the construction or application of the Constitution of the United States.

"5. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

"6. In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

"7. Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the

highest Court of a State, nor the construction of the statute providing for review in such cases."

AVERMENTS OF THE BILL.

In the preamble to the bill (printed in transcript, page 2) it is averred that complainant brings this bill against respondents,

"for that this is a cause in equity arising under the Constitution of the United States, and especially under that part of the **Fourteenth Amendment** thereto, which provides that '**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**'" (Boldface ours.)

The opening paragraph of the Ninth Article of the bill (Tr., p. 7) is as follows:

"That all that part of said tax in excess of that amount thereof imposed upon said property and said valuation thereof as returned by your orator, is **unconstitutional** and void, and the levy and collection thereof **will abridge the privileges and immunities of your orator as a citizen of the United States, and deprive your orator of its property without due process of law, and deny to your orator the equal protection of the law, for that,**" etc. (Boldface ours.)

The concluding clause of paragraph (c) of the Ninth Article of the bill (Tr., p. 14, top of the page) is as follows:

“Your orator states that the State of Louisiana, and the taxing authorities of the City of New Orleans were, and are, wholly without authority or jurisdiction to assess and tax your orator upon said credit balance to said No. 1 account, and said tax to the full extent that the same results from a valuation and assessment on account of money in possession on deposit or in hand in excess of the tax resulting from an assessment of \$1,000 upon said item is void and of no effect.”

The concluding paragraph of the Tenth Article of the bill (Tr., p. 15) is as follows:

“If your orator, in addition to the foregoing taxes, licenses and fees, is compelled to pay said taxes levied as aforesaid on said pretended assessed valuations of said several items designated as “money loaned on interest,” all credits and all bills receivable for money loaned or advanced for goods sold as money in possession, on deposit or in hand, the taxes so exacted from your orator will be unequal and unjust as compared with the taxes imposed upon others within the territorial limits of the authority levying the same, and will be grossly disproportionate to the value of your orator's property within said territorial limits, and will amount to a confiscation of your orator's property.”

The Eleventh Article of the bill (Tr., p. 15) avers that

“the defendants combining and confederating together to abridge the privileges and immunities of your orator as a citizen of the United States, and to deprive your orator of its property without due process of law, and to deny to your orator the equal protection of the law, have demanded,” etc.

At the end of said tenth article of the bill (Tr., p. 15), referring to the assessment of No. 1 account, the foregoing averment is repeated:

The answer of the respondents (Tr., p. 23 *et seq.*) averred that the assessments complained of were made in obedience to Section 7 of Act 170 of 1898 of the General Assembly of Louisiana, and that said section of said act did not in any respect violate the Constitution of the United States. As showing respondents' understanding of the issue raised by the bill, reference is particularly made to the second paragraph of Article Nine of the answer (Tr., p. 25), which is as follows:

"Your respondents hereby particularly deny the allegation in said article contained that the said assessment on 'open accounts, credits, bills receivable, money loaned, etc.,' whether the same consists of money loaned, past-due premiums, or premiums in course of collection, or notes taken for loans made or for premiums due, whether for first premiums or for premiums subsequently due that would otherwise lapse, is unconstitutional and void, and that the levy and collection thereof will abridge the privileges and immunities of complainant as a citizen of the United States and deprive complainant of its property without due process of law, and your respondents aver the truth and fact to be that said credits 'arise from business transacted in' the City of New Orleans and State of Louisiana, and are according to, and in obedience to, the direct mandate of Section 7 of Act 170 of 1898, assessable and taxable in the City of New Orleans, the said act declaring it to be the intent and purpose of the law of Louisiana 'that no nonresident, either by himself or through any agent, shall transact business here without paying to the State a corre-

sponding tax with that exacted of its own citizens, and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said nonresident, his agent or representative.' Your respondents aver that **said Act 170 of 1898, and particularly Section 7 thereof, are in no respect violative of any provision or provisions of either the Constitution of Louisiana or of that of the United States**, and your respondents further aver the truth and fact to be that the assessments levied by the State of Louisiana through these respondents are just and fair and intended to operate equally on all taxpayers within its jurisdiction." (Boldface ours.)

FINDINGS OF THE COURT.

The opinion of the trial Court is to be found at page 115 *et seq.* of the printed transcript. After stating the pleadings and the facts, the first conclusion which the Court reached is to be found on page 126 of the printed transcript, and it is in the words which follow:

"I, therefore, hold that the **policy-loan** arrangements do not establish any credits in favor of the insurance company **on which the insurance company can be taxed, either by the laws of Louisiana or by the laws of any other State.**" (Boldface ours.)

At the bottom of page 128 of the printed transcript the Court says that the premium lien-note loans are, in all substantial respects, the same as the policy loans, and its findings in respect of these loans and of the blue notes, we may fairly assume, would be similar to its findings in the case of the loan agreement.

On page 130 of the printed transcript the Judge holds that, while in his view of the case it is unnecessary to decide whether the complainant would be taxable on its policy loans, even if they were loans in a legal sense, yet he proceeds to differentiate the loans in the case at bar from the loans in the **Metropolitan case**, 205 U.S. 395. In the **Metropolitan case** the only question considered was whether or not Section 7 of Act 170 of 1898 of the General Assembly of Louisiana was in contravention of the Constitution of the United States, and thus the Court **impliedly held** that the State law, if it sought to tax the loans in the case at bar, was in contravention of the Constitution of the United States.

Thus from the foregoing it is clear that in the pleadings complainant contended that Section 7 of Act 170 violated the United States Constitution. Respondents understood that this was claimed, and accordingly averred that the State law violated no provision of the Constitution of the United States. The first finding of the Court was that "their credits could not be taxed by the laws of Louisiana, or of any other State," which finding was tantamount to saying that the Louisiana statute was in contravention of the Constitution of the United States.

A thorough examination of the decisions of the Supreme Court construing the Act of Congress of March 3, 1891, has been made, and no case exactly similar to the case at bar has been found.

In the case of **Loeb vs. Trustees of Columbia Township**, 179 U. S. 472, it was held that the Act of Congress of

March 3, 1891, gave jurisdiction to the Supreme Court where either party to the cause **claimed** that a State law was in contravention of the Constitution of the United States. The Court said that the act

“extends to every case in which either party claims that the State law is in contravention of the Federal Constitution, and that claim is either sustained or rejected, if the unsuccessful party seeks to have the decision reviewed by the Supreme Court.”

In the case of **Knop et al. vs. Monongahela River Consolidated Coal & Coke Co.**, 211 U. S. 487, the Court declined to take jurisdiction, but, in that case, the appellee did not claim that the State law was invalid, but that, properly construed, it did not apply to the facts.

In the instant case the unconstitutionality of the State law was certainly **claimed**. We submit that, while the Circuit Court held that the loans were not loans in any sense, yet, at the same time, it held that the loans could not be taxed by the laws of Louisiana or of any other State, which is exactly the same as saying that the act is in contravention of the Constitution of the United States. Furthermore, the Court differentiated the case at bar from the **Metropolitan case**, 205 U. S. 395, in which case the sole question was the constitutionality of the State law. In the pleadings the principal issue was whether or not the tax law violated any provision of the Federal Constitution. Appellee **claimed** that it did, and appellant **claimed** that it did not. The Act of Congress simply pro-

vides that the Supreme Court has jurisdiction of a direct appeal from the Circuit Court

“in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.”

In some of the decisions the Supreme Court appears to have added a further condition—that is, that the question of the constitutionality of the State law must have been passed upon. If this condition is added to the Act of Congress the litigant is placed entirely at the mercy of the trial Court as to what Court the appeal shall be taken. We do not believe Congress so intended. The Act of Congress merely says that the appeal shall lie when the State law is **claimed** to be in contravention of the Constitution of the United States, and contains no suggestion that the findings of the trial Court shall affect the course of appeal.

We submit that, even if the findings of the trial Court are to be considered, the Circuit Court, while deciding that the loans in question were not intended to be taxed by the State law, yet the Court also struck the statute with nullity.

We submit that, under the pleading and the findings, the appeal is to the proper Court.

In conclusion, we take the liberty to suggest that this is a matter of grave importance to both parties; that many other cases now in the Circuit Court depend upon the decision in this case, not as to jurisdiction, but as to

the merits; and we entertain the hope, in view of the pleadings, the findings of the lower Court and the desire of all parties to the suit that the case will be considered and decided by the Court, that your Honors will not dismiss the appeal for want of jurisdiction.

Respectfully submitted,

GEO. H. TERRIBERRY,
Solicitor for Board of Assessors.

H. GARLAND DUPRE,
Solicitor for City of New Orleans.

HARRY P. SNEED,
Solicitor for State Tax Collector.





FILED.

JAN 24 1910

JAMES H. McKENNEY,

Supreme Court of the United States

OCTOBER TERM, 1909.

No. 112.

THE BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS, THE CITY OF NEW OR-
LEANS *ET AL.*,

APPELLANTS,

VERSUS

THE NEW YORK LIFE INSURANCE COMPANY,
APPELLEE.

*Appeal From the Circuit Court of the United States for
the Eastern District of Louisiana.*

BRIEF FOR APPELLANTS.

GEO. H. TERRIBERRY,

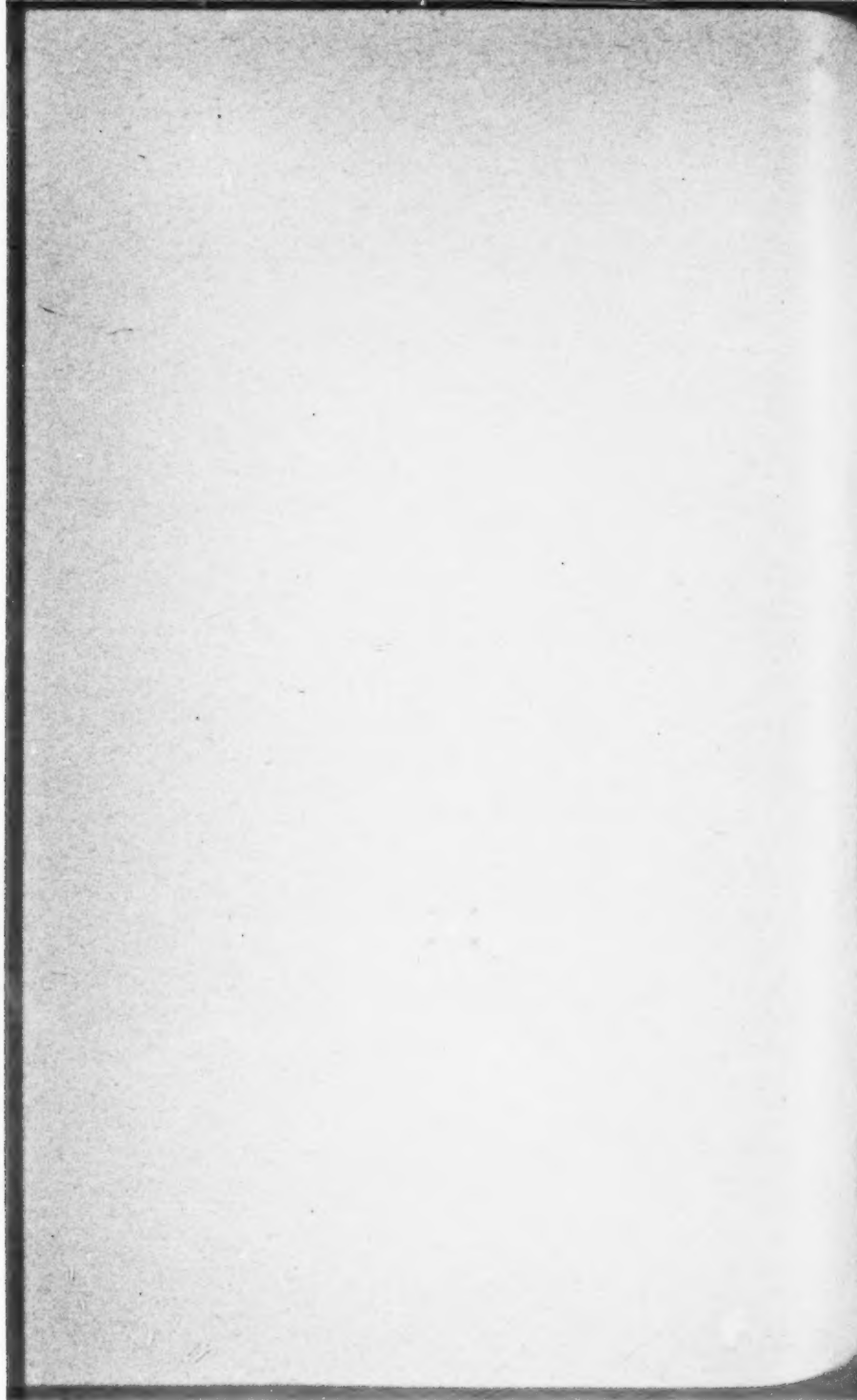
Solicitor for Board of Assessors.

H. GARLAND DUPRE,

Solicitor for City of New Orleans.

HARRY P. SNEED,

Solicitor for State Tax Collector.



Supreme Court of the United States

OCTOBER TERM, 1909.

No. 112.

THE BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS, THE CITY OF NEW OR-
LEANS *ET AL.*,
APPELLANTS,

VERSUS

THE NEW YORK LIFE INSURANCE COMPANY,
APPELLEE.

*Appeal From the Circuit Court of the United States for
the Eastern District of Louisiana.*

BRIEF FOR APPELLANTS.

May It Please the Court:

The New York Life Insurance Company, complainant and appellee herein, a corporation organized under the laws of New York, and engaged in writing contracts of life insurance, and having a legal domicile and doing

business in the State of Louisiana, has brought this suit against the Board of Assessors of the Parish of Orleans, John Fitzpatrick, State Tax Collector for the First District of the City of New Orleans, and Otto Briede, Treasurer of the City of New Orleans, to restrain the collection of taxes upon an assessment levied against it as follows:

Money loaned on interest, all credits and all bills receivable for money loaned or ad- vanced for goods sold	\$568,000.00
Money in possession, on deposit and in hand.	51,700.00
Furniture	500.00
	<hr/>
	\$621,100.00

Less the sum of \$1,500, which complainant admits is taxable. The property so assessed is credits belonging to the complainant arising from loans made by it to its policy holders in Louisiana, which credits are represented by notes called by the complainant "blue notes," a copy of which is inserted in the transcript at page 47, and also from deferred payments of premiums evidenced by what is called by complainant "premium lien notes," a copy of which is inserted in the transcript at page 66. Also money in hand and in bank in the City of New Orleans.

The Court *a qua* granted the prayer of complainant and perpetually enjoined the tax-collecting officers of the City of New Orleans and the State of Louisiana from enforcing the collection of the taxes upon said assessment.

From this judgment all of the defendants have appealed.

The assessments involved in this cause are levied by authority of Sections 1 and 7 of Act 170 of 1898 of the General Assembly of Louisiana, which are to be found at pages 346, 347, 350 and 351 of the Act of 1898; also in the appendix hereto.

The assignments of error mainly relied on are the first, second and fourth. They are to be found on page 133 of the printed transcript and are as follows:

FIRST. The Court erred in holding that "the policy-loan arrangements do not establish credits in favor of the insurance company on which the insurance company can be taxed, either by the law of Louisiana or by the laws of any other State."

SECOND. The Court erred in finding "that the complainant company has no credits of any kind whatever in the State of Louisiana."

FOURTH. The Court erred in holding that "the increase of the assessment from \$1,000, as returned by complainant, to \$51,700, as made by the assessors, so as to include in the assessment the average balances in No. 1 *Bank Account*, is illegal.

The first and second assignments of error may be discussed together. They resolve themselves into two questions:

FIRST. Is the property here taxed "credits" and "cash" to which the terms of the act apply?

SECOND. If they are, has the Legislature the right to tax them?

Both of these questions have been considered by your Honors and determined in favor of the taxing power in a similar case, *Metropolitan Life Insurance Company vs. City of New Orleans et al.*, 205 U. S. 395. However, as the complainant herein seeks to make a subtle distinction between the property involved in the *Metropolitan case* and that in the case at bar, we purpose to discuss both propositions anew.

I.

Is the property here taxed "credits" and "cash," to which the terms of the act apply?

Under this heading we prefer to discuss the assessments of "credits" and "cash" separately, beginning with the former.

The credits, as before stated, arise from loans, evidenced by promissory notes, made by the company to its Louisiana policy holders, and from deferred payments of premiums likewise evidenced by promissory notes. The manner of transacting the business of loaning money to its policy holders in Louisiana is as follows (Transcript, p. 55):

"Applications for loans to policy holders of Louisiana are initiated by the policy holder writing directly to the home office or communicating with the home office through the office in his locality. If the matter comes to the point of an application for a loan, the policy holder either writes a letter or signs the company's application form and sends it through the mail directly to the home office or by way

of the company's office in the locality, where at the home office through the office in his locality. loans and filed there; it is never filed anywhere else.

"In the division of policy loans, when such application is received, the policy contract, the state of premium payments, the title to the policy, and all other things necessary to determine whether or not the company will make the loan, are investigated, and if the company concludes to accept the application it is accepted by the division of policy loans at the home office, and word to that effect sent to the policy holder either directly by mail or through the company's office in the locality. If the company accepts the loan, the loan agreement is made up in duplicate in the division of policy loans of the home office, and when so made up is transmitted to the policy holder, either directly through the mail or by way of the company's office in the locality, for signature, and when signed is returned to the home office with the policy in the same way that the application came usually.

"When the papers are received here, if the papers are found to be properly executed, and accompanied by the policy as a pledge to secure the loan, the division of policy loans draws a warrant on the treasurer of the company at the home office for the amount of the loan, and the treasurer in response thereto sends to the division of policy loans a check for the amount of the loan, drawn on the company's bank account in the City of New York, except the loans to Canadian policy holders and California policy holders. The division of policy loans then sends the check by mail either directly to the borrower or to the borrower by way of the office in the locality.

"Notice of interest due on such loans, as well as on premium lien note loans, is made up in the comptroller's department in the home office at the same time with, and as a part of, the notice of premium, and is

sent by mail to the policy holder at least fifteen, and not more than forty-five, days before the due date of the premium and interest, the interest on all loans being made payable the due date of the premium. These notices, showing the amount of the premium and interest due, are made up in the comptroller's department of the home office, and are usually sent to the office in the locality for actual mailing to the policy holders. The annual interest is always payable at the home office, and the notice sent to the policy holders so states, but the notice usually also authorizes the policy holder to pay it at office in his vicinity, which is named in the notice. The policy holder pays it either by remitting directly to the home office or by remitting to the authorized local office."

It thus appears, according to the foregoing, which is the testimony of the secretary of the complainant company, that the method of making these loans is to all intents and purposes the same as that employed by the Metropolitan Life Insurance Company, and described on pages 398 and 399 of the report of that case in 205 U. S. Both show the credits to arise from loans made in due course of its Louisiana business.

The disputed tax in this case, as in the Metropolitan case, is not *ex nomine* on these notes, but is expressed to be on "credits, money loaned, bills receivable," etc., and its amount was ascertained by computing the sum of the face value of all the notes held by the company at the time of the assessment.

But in this case the complainants argued, and indeed the Court *a qua* took the view, that these loans were not

loans at all, but "anticipated payments made by the insurer to the insured."

The learned Judge said (Tr., p. 130):

"It is urged that in the case of the *Metropolitan Life Insurance Co. vs. New Orleans*, 115 La. 708, affirmed by the Supreme Court of the United States in 205 U. S. 395, it was held that a life insurance company organized and domiciled in New York was taxable in Louisiana on *policy loans* made in the latter State.

"But it does not appear from the report of the case that the arrangements described as 'policy loans' in the case cited were the *same arrangements* as are described by that name in this case. The terms of the obligation are not recited in the opinion of either Court, and it seems to have been assumed and conceded, and for aught that appears to the contrary it may have been the fact, that the 'policy loans' in the *Metropolitan case* may have been loans in the ordinary sense. It is certainly to be presumed that, if the *policy loans* in that case had been the arrangement which the 'policy loans' of the complainant are shown to be in this case, that fact would have been called to the attention of the Court. In the *Metropolitan case* the Court dealt with the 'policy loans' before them as if they were ordinary loans, and I am bound to assume they were. But the *policy loans* in this case are not ordinary loans, nor loans in any sense."

With the record of the *Metropolitan case*, so readily accessible to your Honors, and the recollection of so recent a case fresh in your Honors' minds, we feel it unnecessary to argue to this Honorable Court that the so-called "arrangements" in both cases are—at least, so far

as the taxing power is concerned—essentially the same. The term “loan” has not been applied to these transactions by the taxing power, but by complainant itself. It calls them loans. We are taxing the company upon “credits, money loaned, bills receivable,” etc., and it is immaterial to us within what appellation these transactions fall, though we submit under the following authorities that they are money loaned, giving rise to credits.

“A loan has been properly defined to be an advancement of money upon a contract or stipulation express or implied, to repay at some future day.”

Freeman, Adm., vs. Brittin, 17 N. J. Law (2 How.), 231.

“The incidents appertaining to a contract for loan of money by the lender at the time of the contract, and a stipulation or agreement to repay it, and generally with interest, at a future time, by the borrower or some other person in his behalf and on his account.”

Ibid.

In the case of *Omaha National Bank vs. Mutual Life Benefit Co.*, 81 Fed. 938, the Court treated the advance on a policy to the policy holder as a loan, saying on page 939:

“I am of the opinion that the premium loan on each of the policies in suit outstanding at the time of the lapse was an indebtedness to the company on the policy within the meaning of the nonforfeiture provisions.”

And, also, on the same page:

"Debt lies whenever a sum certain is due, without regard to the way by which the obligation was incurred or by what it is evidenced."

In *New York Life Ins. Co. vs. Curry*, 61 L. R. A. (Ky.) 270, it is said:

"In the case at bar there is no conceivable reason why the insurance company lending the money is, or can be, in a different position from any other lender of money had the policy been assigned to the other as collateral, and a default in payment of the interest had occurred. If it loans money on its policies held by its policy holders, its rights as lender are exactly what they would be if, instead of the policies, the borrower pledged stocks, bonds or policies in other companies, or gave a chattel or real-estate mortgage to secure the loan. There is nothing in appellant's business or charter rights, so far as we are advised, which entitles it to privileges, when loaning its money, not enjoyed generally by banks, trust companies and other corporations and individuals."

"The policy provided that, after the payment of these annual premiums, the insured might borrow certain sums of money from the company, graded, as to the amount, by the number of premiums paid, pledging his policy as collateral security. The petition averred that he relied upon this means of obtaining money with which to pay his premium, and that he applied for a loan about the 30th day of May, 1895, and was refused, and that such refusal was the cause of his failure to pay the premium note."

Union Cent. Life Ins. Co. vs. Burn, 49 L. R. A. 747.

And all through the decision the matter is treated as a loan.

So in the case of *N. Y. Life Ins. Co. vs. Pope et al.*, 68 S. W. 853, such an advance by the insurance company is treated as if it were a loan between ordinary individuals, and is declared to be a loan.

So in 80 S. W. 412, a similar advance by a life insurance company was treated as a loan.

So in *Steele vs. Connecticut Gen. Life Ins. Co.*, 52 N. Y. Sup., the advance by the company on the policy as collateral was sustained as a loan.

Rodman vs. Marson, 13 Barb. (N. Y.) 75:

"The payment of usance or interest at given times and at a given rate is one of the unerring tests of a loan of money. A loan is said to be that which is furnished for temporary use with a condition that it shall be returned, or its equivalent, with a compensation for the use."

And on page 76:

"The presence of interest in the transaction is a feature of most significant import. Interest proceeds from money or property lent by one person to another, or from debts, legacies or sums of money due, or to grow due, and payable from one person to another. Whenever there is interest payable, there exists a corresponding obligation somewhere to pay it."

And, after quoting from McCullough's Com. Dictionary, 96; from Webster's Dictionary, and from 2 Black Com. 454, the Court says:

"These definitions sufficiently disclose what interest is, and from whence it proceeds; that it imports the existence of a debt, a loan of property or a sum of money, of which it is to issue, and for the use or withholding of which it is to become payable; and it also imports the existence of some obligation or duty in regard to the payment of the principal."

In the Standard Dictionary, *verbo* "Loan," it is defined to be

"something lent, especially a sum of money lent at interest."

In Webster's International Dictionary, *verbo* "Advance," it defines it as

"a furnishing of something before an equivalent is received (as money or goods), * * * money or value supplied beforehand."

March's Thesaurus Dictionary of the English Language, page 619, gives, as a synonym of loan:

"ADVANCE. The act of furnishing beforehand or on credit."

And as a definition of loan:

"Something furnished to another on condition that it would be returned itself or in an equivalent of its kind."

Standard Dictionary, *verbo*, "Interest," third definition:

"Payment for the use of money, or money so paid; an agreed or statutory compensation accruing to a creditor during the time that a loan or debt remains

unpaid, reckoned usually at a yearly percentage of the sum owed. '

Bouvier's Law Dictionary, *verbo* "Loan," says:

"A loan in general implies that a thing is lent without reward; but in some cases a loan may be for a reward, as a loan of money."

And in 7 Pet. 107, the United States Supreme Court says:

"A promise to return the money borrowed is, indeed, one among the ordinary indications of a loan."

The transactions here in question contain every element necessary to constitute a loan:

FIRST. Money is delivered from the company to the assured.

SECOND. There is an obligation to return this money in one of two ways.

THIRD. Interest is paid.

If there is any element necessary to constitute a loan that is not present here, we cannot conceive of it.

Now, in the opinion rendered herein by the Judge *a quo*, great importance is attached to the fact that witness McCall said that his company has never sued on one of its loans, and never intends to do so. The reason for that is perfectly plain. The terms of the loan agreement simply obviate the necessity for a suit. As was stated in the Kentucky case quoted above, the company never sues because its agreement with the assured places it in a better posi-

tion than a judgment against him would place it. They have ample security against his failure to pay already safe in their hands, and a forfeiture of that security is much more beneficial to the company than the collection of the loan under a judgment against the assured.

The payment in the case at bar is to be made in one of two ways—either in cash or by forfeiture of the policy.

FOURTH. As to their taxability.

In the case of *Alabama Gold Life Ins. Co. vs. Lott, Tax Collector*, 54 Ala. 499, resistance was made by the insurance company, by a bill in equity and injunction, to restrain the collection of taxes on certain items of its assessment, in which were included loan premium notes. The Court on page 505 said:

"And if any of the deferred premium notes, or other similar credits, for which the policies stand as sufficient security, are not paid, the company is a gainer thereby, since there is a corresponding larger reduction of its indebtedness by the consequent forfeiture of policies.

"Our conclusion is, therefore, that the sums due by credits of the class specified, and, in fact, all the available assets, except the State bonds and the sum invested in real estate, taxed as such, and the other capital paid in, which is taxed as paid-up capital, and other assets that are otherwise taxed, and except, also, real property not in Alabama, must be set off against the reserve fund, which is invested therein, and the other indebtedness of the company; and that the excess of the credits over the indebtedness is the sum to be assessed as 'solvent credits,' subject to taxation."

The tax here sustained on these loans was under the seventh section of the revenue act of Alabama, which levied a tax on "all moneyed capital—that is, all money loaned and solvent credits or credits or value."

If the fact of suing *vel non* is the criterion as to the taxability of an alleged loan, the pawnbroker would be immune from taxation. He never sues.

It is immaterial in what form these loans are evidenced. It is immaterial at what time these loans are to be repaid. It is also immaterial whether the payment is to be made by the transfer of actual cash by the assured to the company or by deducting the amount from an indebtedness which may later exist between the company and the assured, for, in any event, actual payment is made.

We earnestly urge that these transactions are loans, and, as such, taxable, though Judge Saunders has attempted to make a distinction where no real difference exists. Whether it is good governmental policy to tax them is a question for the Legislature, and not for the Courts. That body has seen fit to tax "money loaned" when loaned by citizens of this State; and, by the amendatory act of 1890, contained in the present revenue law (Section 7), foreigners doing business in Louisiana are included by express terms.

The foregoing six pages are copied from the brief used by the defendants in the case of *Travelers' Ins. Co. vs. Board of Assessors*, 47 So. Rep. 439, 122 La. ——. This

case we contend is perfectly analogous to the one at bar, as is shown by the following excerpts from the opinion of the Louisiana Supreme Court in that case:

“Plaintiff contests this assessment. It contends, as to the first item, that the loans which it makes to its policy holders are not in reality loans and do not give rise to credits; but that, if they are loans and do give rise to credits, they nevertheless are not taxable in this State because not situated in this State. Plaintiff contends, as to the second item, that it embraces money which is deposited in bank merely for transmission, and which, therefore, is not taxable in this State, it not being situated in this State, and that the assessment, even as including this nontaxable money, is excessive. * * *

“The facts in connection with the loans are these: The policies of plaintiff contain a clause that the policy holders ‘may borrow on the security of the policy an amount of money equal to what the surrender value of the policy will be one year after the loan.’ For effecting a loan, the policy holder applies for it to the resident agent, and the latter furnishes a blank form. This blank is filled out and the resident agent sends it to the home office of the plaintiff. The home office sends to the resident agent a check payable to the borrower, and the agent turns this check over to the borrower, receiving his policy as collateral security for the loan. No other papers are executed. The application for the loan evidences the entire transaction. It recites that so much money has been loaned; that the loan bears so much interest, and is payable at such a date, at which date repayment of it may be demanded, subject to extension by consent of both parties, and is secured by pledge of the policy. The maturity of the note corresponds with the maturity of the premium next falling due,

and a stipulation is added that in the event of non-payment of the note, or of the premium, within one month after due, the company is authorized to cancel the policy for its cash surrender value, and to attribute *pro tanto* the amount due under the policy to the payment of the note. The note thus executed is kept by the home company. One month before the note and the premium fall due the home company sends to the resident agent a receipt for the premium and the interest on the note, and also a notice to be sent to the policy holder. The agent sends the notice, receives payment and delivers the receipt. In case of nonpayment at the expiration of the delay of grace, he sends the receipt back to the home company with advice of the nonpayment. The receipt for the premium and that for the interest on the note are on the same slip of paper. The usual course of the company is then simply to forfeit the policy and to deduct the amount of the note from its surrender value. When a note is paid, the payment is made to the local agent, who transmits the amount to the home company. The paid note is then sent to the agent, who delivers it to the maker."

We respectfully submit that there is no material difference between the business methods of the complainant here and those of the Travelers' Insurance Company in the case above quoted.

It is quite true that in the Travelers' decision the following *obiter dictum* appears:

"In contending that the loans in question are not in reality loans, and do not give rise to credits, the learned counsel assume that the transaction is merely an advance *pro tanto* of the amount eventually payable under the policy; that the money cannot be required to be reimbursed, but can only be de-

ducted from the surrender value of the policy. If such were the case there would be no loan and no credit, and, therefore, nothing to be taxed, and a case would be presented similar to the one which Judge Saunders, sitting as Circuit Judge, had to deal with in the suit of *New York Life Insurance Company vs. Board of Assessors*, 158 Fed. 462, recently decided in the United States Circuit Court for the Eastern District of Louisiana. But the document evidencing the loan expressly stipulates: 'The company may demand repayment of said loan at its maturity.' True, the company also 'is authorized' to cancel the policy and deduct the amount of the loan from its surrender value; but this merely gives it an option so to do. It does not impose an obligation."

The appellants well recognize, and even urge, in this brief that the construction of a State statute by the Supreme Court of that State is binding upon this Honorable Court to the extent of the precise question decided, but no further.

Southern R. Co. vs. Simpson, 131 Fed. 705, 65 C. C. A. 563.

They also admit that *obiter dicta* construing a statute are entitled to some weight, though by no means binding.
16 How. 275; 85 Fed. 180, 123 Fed. 480.

We strenuously urge, however, that *obiter dicta* of the State Court as to facts in a case which was never brought before it, and the record of which its members never saw, are entitled to no weight. Especially is this true in the case at bar, where the whole record in the case is before

your Honors. An examination of the record by your Honors will disclose a state of facts similar to those described in the opinion of the Louisiana Supreme Court in the *Travelers' case*, hereinabove printed, and upon such finding the property herein involved will be decreed taxable, as was done in the case mentioned.

On rehearing in that case the following was handed down, and this, being the construction of a statute "on the precise question decided," we submit is binding upon your Honors:

Land, J. (on rehearing): "The plaintiff company has been doing a life-insurance business in the State of Louisiana for several years, through its duly authorized agents, collecting annual premiums to the amount of some \$60,000 or \$70,000, and lending money to its policy holders on the pledge of their respective policies.

"The argument that such loans were mere advances out of funds belonging to the policy holders is certainly not serious. The written contracts evidence loans on interest secured by a pledge of the policies, and the petition alleges that the plaintiff company was illegally taxed on 'loans made to policy holders.'

"That, under Section 7 of Act 170 of 1898, such credits arising out of the business transacted in this State are taxable cannot be seriously disputed. (See *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S. 395, 27 Sup. Ct. 499, 51 L. Ed. 853.) The distinction between taxing the average capital invested by a nonresident in business carried on in a particular State and the taxation of isolated credits due to non-residents is obvious. The purpose of the section quoted is to place the resident and nonresident busi-

ness concern on the same plane of equality. Section 7 of Act No. 170 of 1898 operated full notice to foreign corporations that, if they engaged in business in the State of Louisiana, they would be taxed in the same manner as similar local corporations.

"The only issue raised in the pleadings is whether the plaintiff company is taxable on credits arising out of its business and representing capital invested in this State.

"*The proposed constitutional amendment of 1908 exempting loans on life policies from taxation recognizes their taxability under the provisions of the Constitution of 1898.*" It is needless to state that this amendment is not retroactive. (Italics ours.)

The *Metropolitan case*, to which the learned Justice refers, is quoted in the second part of this brief.

That the decisions of the Supreme Court of Louisiana in these two cases—to the effect that foreign corporations doing business in Louisiana are taxable upon their "credits, money loaned, bills receivable," etc.—do not stand alone, appears by reference to the cases of *General Electric Co. vs. Board of Assessors*, 121 La. 116; *National Ins. Co. vs. Board of Assessors*, 121 La. 198; *Liverpool & London & Globe Ins. Co. vs. Board of Assessors*, 122 La. 98; *N. E. Mut. Life Ins. Co. vs. Board, Etc.*, 121 La. 1068; *Travelers' Ins. Co. vs. Same*, 122 La. 129; *U. S. Fidelity & Guaranty Co. vs. Same*, 122 La. 139; *Standard Marine Ins. Co. vs. Same*, 123 La. —; *Orient Ins. Co. vs. Same*, not yet reported.

Upon the question of the taxability of "cash on hand and in bank" belonging to complainant we submit that,

under the *Travelers' case, supra*, the same is taxable by the statute, and that no Federal constitutional provision interferes therewith.

Thus we submit that, under the laws of Louisiana, this property is taxable. This Honorable Court will not go behind the interpretation of the statutes of Louisiana by the Supreme Court of that State, and the question of the constitutionality *vel non* of this tax *quoad* the Constitution of the United States is thus placed squarely before your Honors.

Having shown, we submit, conclusively that the so-called policy-loan transactions do give rise to "credits, money loaned, bills receivable," etc., and that the same are taxable under the laws of Louisiana as defined by the Supreme Court of that State, we come to the discussion of the next proposition.

II.

Has the Legislature the power to tax them?

Complainants urge that the Legislature of Louisiana cannot lay a tax upon this property without violating the Constitution of the United States. In other words, it is argued that, if the statute applies to these credits, it is unconstitutional. The fallacy of this argument plainly appears when it is remembered that complainant is a foreign corporation, which has come into the State of Louisiana and established a legal and business domicile there. It makes contracts in Louisiana, which contracts are governed by Louisiana law. It can

be sued in Louisiana. Service upon its agent in Louisiana is as effective as upon its president in New York. It is as absolutely bound by Louisiana law so far as its business in that State is concerned as if it had no other domicile. That the State of Louisiana has the right to prescribe the conditions upon which foreign insurance companies can enter therein and do business is a proposition that will hardly be denied. However, we submit the following upon the point:

Article 242 of the Louisiana Constitution of 1898 provides:

"Corporations, companies or associations organized or domiciled out of the State, but doing business therein, may be licensed and taxed by a mode different from that provided for home corporations or companies; provided, said different mode of license shall be uniform upon a graduated system, and said different mode of taxation shall be uniform upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies or associations who transact the same kind of business."

Although a different method or mode is allowed by the Constitution for taxing foreign corporations, yet the General Assembly did not think it necessary to resort to any other system than that applied to domestic corporations, but has placed them on the same basis.

All these assessments were made under Section 7 of Act 170 of 1898, which provides:

"It is made the duty of the tax assessors throughout the State to place upon the assessment list all

property subject to taxation; * * * that, in assessing mercantile firms, the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party or parties interested. *And this shall apply to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no nonresident, either by himself or through any agent, shall transact any business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said nonresident, his agent or representative."*

We italicize the clause directly pertinent and applicable to these cases of foreign corporations doing business in this State. This clause, thus italicized, is only a repetition *ipsissimis verbis* of the amendment to Section 7 of the Act of 1888, contained in Act No. 106 of 1890, page 124. The history of that amendment was this:

The Supreme Court in 41 An. 1915, *Barber Asphalt Paving Co. vs. City of New Orleans*, decided in December, 1889, that, under the then existing revenue law of 1888, the paving company could not be assessed, or a tax levied or collected, on the credits, etc., of a foreign corporation. To remedy this defect, the General Assembly, at its first session after the rendering of this decision, in 1890,

amended the section of the Act of 1888 by adding the clause which we have hereinbefore quoted and italicized.

STATE TAXATION ON FOREIGN CORPORATIONS.

It is contended by counsel for complainant that the clause quoted is unconstitutional, as being in contravention of the Fourteenth Amendment and other amendments to the Constitution of the United States. In other words, they deny the right of the State to control the admission of foreign corporations to do business in the State by prescribing conditions, especially by taxation. We had supposed that the contrary doctrine had been so frequently maintained by the Federal and State Courts, as well as by the text-writers, that it was no longer open to question, and that it had become almost elemental. However, we submit the following on this point:

"There is nothing in the Federal Constitution that prevents a State from prescribing the terms on which foreign corporations shall come within its borders and carry on business with its citizens. The whole matter of admitting foreign corporations to do business in a State rests absolutely on the discretion of the Legislature of the State."

13 Eng. & Am. Enycy. of Law, 2d Ed., p. 860, and authorities cited in Note 1, p. 861.

"And as no State is under obligation to permit a foreign corporation to carry on business or exercise franchises within its territory, the permission to do so may be granted under such restrictions, or *permitted on such conditions regarding taxation, as the State may think proper or prudent to impose*; provided that such conditions are not repugnant to the

Constitution of the State or to the Constitution and laws of the United States." (Italics are our own.)

Cooley on Taxation, 3d (new) Ed., Vol. 1, pp. 94 and 95, and authorities supporting the text in Notes 1, 2, 3.

One of the latest and most thorough treatises on the law of corporations lays down the doctrine as follows:

"With exceptions hereafter indicated, relating to cases where foreign corporations are engaged in interstate commerce, or to cases where they are agencies of the United States, and to other special cases elsewhere considered, the Federal Constitution imposes no restraint upon the States in regard to taxation of foreign corporations, but the rule is that the States have the right to exclude them entirely; they have the power to impose upon them such burdens as the conditions of their entering as they may see fit; and these burdens or impositions may as well take the form of a taxation at a greater rate or upon a different principle from that applicable to domestic corporations as any other. When, therefore, the foreign corporation is of such a character—as, for instance, it is an insurance company, and, consequently, not engaged in interstate commerce—that the State has the power to exclude it altogether, it is under no Federal restraint in respect of this power of taxation over it. As a foreign corporation is not, within the domestic State, entitled to the *privileges and immunities of citizens of other States*, within the meaning of the Federal Constitution, it cannot demand, under that Constitution, that it shall be taxed at the same rate and on the same principles as corporations of the domestic State."

Thompson's Commentaries on Corporations, Vol. 6, Sec. 8087, and prior sections, and authorities there referred to. (The italics are the author's.)

*“Foreign corporations when deemed persons.
 * * * They are also deemed persons within the
 meaning of a statute relating to taxation, unless a
 different intent is indicated in the statute.”*

Thompson's Commentaries on Corps., Vol. 6,
 Sec. 7900; authorities in note, 31 N. Y. 32; 18
 Abb. Pr. (N. Y.) 118; 28 How. Pr. (N. Y.) 41.
 (The italics are the author's.)

In support of this principle, Cook on Corporations (4th Ed.), Vol. 12, p. 1080, among other authorities, which we will discuss later on in this brief, has the following in Note 4:

“A tax on manufacturing corporations to the extent of the business which they do in the State is constitutional and enforceable. (131 N. Y. 64; also, 16 Wall. 66; 133 N. Y. 323; 143 U. S. 305; 134 U. S. 594; 52 N. J. L. 308; 44 Fed. Rep. 24; 141 N. Y. 118; and a multitude of other authorities.)”

“Foreign insurance companies may be required to pay a tax as a condition of doing business in the State, even if home companies are not taxed, or are taxed by a different standard. The tax is not a regulation of commerce. Notwithstanding the insurance company is taxed, its agents may also be required to pay a license fee as such.”

Cooley on Taxation, p. 387, and authorities in notes 1 and 3; 48 Ill. 172; 32 Nev. 424; 10 Wall. 410; 34 N. J. 479; 35 N. J. 574; 85 Penn. St. 513; 94 Ill. 364; 104 Ill. 653; 8 Wall. 168; see, also, Desty on Taxation, Vol. 1, p. 372; *Ibid.*, p. 229.

Burrells on Taxation, p. 151, in treating of taxation of foreign corporations, says:

“While it may be true, as a matter of principle, that taxation should be laid for the purpose of

revenue by an equal and uniform mode, yet what shall be the subjects of taxation, the mode and the rate are in the discretion of the Legislature, in the absence of express constitutional limitation on the subject of taxation, a discretion which has no limitation except that its exercise shall not abridge any of the private rights of person or property secured by the Constitution."

This doctrine was maintained in *Paul vs. Virginia*, 8 Wallace, 168, in which case the State of Virginia had laid a discriminating tax on foreign insurance companies doing business in that State at a greater rate than on her own domestic insurance companies.

The Court sustained the State law, and decided that the business of insurance was not commerce or interstate commerce, and that a State had the right to impose any tax upon a foreign insurance company doing business in its State it deemed proper.

This was in regard to a license tax. In 10 Wallace, 573, they held, similarly, that a law of Massachusetts which imposed a tax of one per cent. on the premiums received in Massachusetts by insurance companies incorporated under the laws of Massachusetts; two per cent. on all premiums received by the companies incorporated under the laws of the other States in the Union, and four per cent. on all premiums received by companies doing business in the State and chartered under the laws of countries other than the United States. In that decision the Court said, referring back to the case of *Paul vs. Virginia*:

“That corporations created by a State could exercise none of the functions or privileges conferred by its charter in other States of the Union, except by the comity and consent of the latter.

“This proposition disposes of the case before us, if plaintiff is a foreign corporation, and was, as such, conducting business in the State of Massachusetts.”

The case is more fully reported in 100 Mass. 531, and see, also, 99 Mass. 148.

The doctrine was held in 10 Wallace, 415, in a license case similar to *Paul vs. Virginia*. In 94 U. S. 535, the same doctrine was announced in a license case.

So, in 113 U. S. 739, the Court said:

“The right of the people of a State to prescribe generally, by its constitution and laws, the terms upon which a foreign corporation shall be allowed to carry on its business in the State has been settled by this Court. (*Bank of Augusta vs. Earle*, 13 Pet. 519; *Paul vs. Virginia*, 8 Wall. 168; *Ducat vs. Chicago*, 10 Wall. 410.)”

In 143 U. S. 314, the Court said:

“Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation—and all corporations in States other than the State of its creation are deemed to be foreign corporations—it can claim a right to do business in another State, to any extent, only subject to the conditions imposed by its laws.”

In 165 U. S., this Honorable Court sustained a State tax on the proportion of capital of a nonresident express company which its property in Ohio represented, and

“that the distribution among the several counties is a matter of State regulation.”

In 166 U. S. 154, the Court again said:

“The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such, by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky in reference to taxation. And, for the reasons given, and on the authorities cited in *Adams Express Co. vs. Ohio State Auditor*, 165 U. S. 194, we are unable to conclude that the method of taxation prescribed by the State of Kentucky, and followed in making this assessment, is in violation of the Constitution of the United States.”

In the fuller statement of the case, page 156, by the dissenting Judges, it is said that the tax statute includes “the intangible property of such corporations, which property—that is, the intangible property—whether situated in or out of the State, shall be considered and estimated in fixing the value of the corporate franchises.”

In *Parke, Davis & Co. vs. Comptroller of New York*, 171 U. S. 658, the Supreme Court of the United States sustained a State tax on the business and franchises of a Michigan corporation, manufacturing drugs in the City of Detroit, but doing business in the City of New York. In that case the Court said:

“It must be regarded as finally settled by frequent decisions of this Court that, subject to certain limitations as respects interstate and foreign commerce, a State may impose such conditions upon permitting

a foreign corporation to do business within its limits as it may judge expedient, and that it may make the grant or privilege dependent upon the payment of a specific license tax or a sum proportioned to the amount of its capital used within the State. (*Paul vs. Virginia*, 8 Wall. 168; *Horn Silver Mining Co. vs. New York*, 143 U. S. 305.)”

“The statute places foreign corporations on the same footing as domestic corporations, and subjects them to the same mode of taxation as if they were residents within the State.”

Desty on Taxation, Vol. 1, p. 344; and authorities in Note 14, supporting the text.

The statute here alluded to in Desty is the same as that of Louisiana, here under discussion.

So in 115 La. 708, *Metropolitan Life Ins. Co. vs. Board of Assessors*, the Supreme Court of Louisiana, said:

“It is not contested that the State has the right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligation to accept the terms; but, if they do accept them, and carry on business in the State, they must comply with them. They cannot avail themselves of the benefits of the consent and repudiate the obligations attached thereto. *The conditions of the consent may refer to the matter of taxation, as well as to anything else.* When foreign corporations come into the State for business purposes, *they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State, and accept and subject themselves to the laws thereof.*” (Italics are our own.)

And, continuing, the Court said:

"As was said in *Bluefields Banana Co. vs. Board of Assessors*, these foreign corporations do business in Louisiana, transact their business precisely as do resident businessmen and corporations. They derive all the advantages to be obtained from the State and city governments which residents receive, and we see no reason *why they should not be taxed as claimed, unless there be insuperable objections in the way*" (p. 709). (Italics are our own.)

In Beale on Foreign Corporations, page 654, in the latter part of paragraph 501, the author quotes Mr. Justice Brewer in the case of *Adams Express Co. vs. Ohio State Auditor*, 166 U. S. 185 (41 Law. Ed. 965), as follows:

"In conclusion, let us say that this is an eminently practical age; that Courts must recognize things as they are, and as possessing a value which is accorded to them in the markets of the world; and that no fine-spun theories about *situs* should interfere to enable these large corporations, whose business is, of necessity, carried on through many States, from bearing in each State, such burden of taxation as a fair distribution of the actual value of their property among those States requires."

Algeyer vs. Louisiana, 165 U. S. 583:

"There is no doubt of the power of the State to prohibit foreign insurance companies from doing business within its limits. The State can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and, unless the conditions be complied with, the prohibition

may be absolute. The cases upon this subject are cited in the opinion of the Court in *Hooper vs. California*, 155 U. S. 648."

WHAT IS DOING BUSINESS IN THE STATE?

Another question is raised: Do these foreign corporations fall under the provision of the statute which says that

"no nonresident, either by himself or through any agent, shall *transact any business here without paying to the State a corresponding tax with that exacted of its own citizens*"? (Italics are our own.)

This question turns on the point as to what is the meaning of the words "transact any business," which is equivalent to "doing business in the State."

"Where an insurance company, by means of agents, writes policies and collects premiums within a State, and designates an officer upon whom papers may be served, it is doing business in the State."

Gray on Lim. of Taxing Power, Sec. 133, p. 103.

In *Paul vs. Virginia*, 8 Wall. 185, the Court, speaking of policies of insurance delivered in the State of Virginia from insurance companies in other States, said:

"Policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are then local transactions, and are governed by the local law."

"ACTS HELD TO CONSTITUTE DOING BUSINESS. In construing the statutes and constitutional provisions,

the following acts have been held to constitute doing business, * * * the loaning of money by foreign insurance companies through their agents in the domestic State; *the transmission to an agent in the domestic state of policies made out on his application, and the delivery thereof by him to the persons insured on receipt of the premium; the taking of a note by a resident agent in the domestic state for an installment of premiums due to a foreign company.*"

Eng. & Am. Encyc. of Law, Vol. 13, pp. 873, 874, and authorities supporting the text in Notes 6, 7 and 8, among which are 32 Fed. Rep. 273, and 46 Fed. Rep. 440.

In 32 Fed. Rep. 273, the case turned on the interpretation of a Missouri statute in regard to a "policy of insurance issued by a company authorized to do business in this State." The insurance company was domiciled in New York, and the application was made in Missouri, forwarded to the company in New York, and accepted by it, and the policy was sent to Missouri and delivered by the company's agent to the Missourian who had applied for the policy. The Court held that the New York insurance company was doing business in Missouri, and cites *White vs. Ins. Co.*, 4 Dillon, 177; 13 Fed. Rep. 526; 1 McCrary, 123; 1 Fed. Rep. 471; 22 Fed. Rep. 103; 8 Wall. 168; and quotes from 117 U. S. 519, as follows:

"The company is a corporation under the laws of New York, but it also transacts business in Missouri, through agents residing there, and, of course, with reference to the business done in that State, is subject to its laws." (The italics "of course" are the Justice's rendering the opinion; the other italics are our own.)

So, in *People ex rel. Badische Anilin und Soda Fabrik vs. Roberts*, 36 L. R. A. 758, the Court of Appeals of New York said:

“If the latter [foreign corporations] come into the State for the purpose of *doing some part of their corporate business here*, they are placed under the obligation to bear some portion of the general burden of taxation. The Legislature has declared that the business done shall bear the burden of a tax to the extent that is ascertained that the capital employed here. (*People [American Contracting & D. Co.] vs. Wemple*, 129 N. Y. 558; *People [Southern Cotton Oil Co.] vs. Wemple*, 131 N. Y. 64; *People [Pennsylvania R. Co.] vs. Wemple*, 138 N. Y. 1 [19 L. R. A. 694]; *People [Singer Mfg. Co.] vs. Wemple*, 150 N. Y. 46.)

“The intention of the Legislature is that, when foreign corporations employ their capital in carrying on a business within this State, they must pay a tax to the State in return for the privileges and benefits they enjoy. Indeed, no good reason can be urged why they should not, according to the business done, be subjected to the same burdens and obligations as are domestic corporations. The policy of the State is not to prevent the employment here of foreign capital, nor place any unreasonable restriction upon such employment. To the contrary, by a wise and enlightened policy, the greatest facilities are offered for the conduct of commercial enterprises of every nature within our borders, without any unreasonable discrimination between the resident and the foreigner.

“If it requires of the foreign corporation that it shall contribute to the revenues of the State a tax measured by the amount of capital employed in doing business here, it is but the requirement in one

form of what it exacts from the home corporation in another form. It is needless to discuss the question more elaborately in view of the discussion it has received in this Court in many decisions."

So, in 33 An. 10, *City of New Orleans vs. Virginia Fire and Marine Ins. Co. et al.*, where an attempt was made to levy a license tax on each of the defendant insurance companies, which had no especial duly-authorized agent here, but accepted or rejected applications for insurance policies made by a general insurance broker, the Supreme Court of Louisiana decided that the companies were not liable, as they were not doing business in the State through an especial authorized agent of their own. But the Court added, on page 14:

"The case would be different if a foreign company had established its own agent here, such agent not carrying on a public insurance agency, *but conducting, under special authority, the business of his foreign principal*, and confining himself thereto, and, instead of falling under the distinctive class or calling of insurance agency, doing the general and indiscriminate business distinguishing that occupation, *acting as the special agent and representative of a particular company. Under that condition, the company would be doing business here through its own agent, whose solicitation of business would be that of his principal, would be liable to the payment of the license tax; while such individual agent would be regarded as falling within the distinctive class of insurance agency.*" (Italics are our own.)

This case is cited with approval in 40 An. 177, *State vs. Woods et al.*

The above passage which we have transcribed is quoted in full and approved by the Louisiana Supreme Court in 43 An. 139, *State of Louisiana and City of N. O. vs. New England Mutual Ins. Co. et al.*, and adds thereto (same page):

“The language quoted, from the facts in the case and the issues involved, applies to a foreign insurance company which accepts risks through a general insurance agency, which has no special authority from it, and which places policies of insurance and reinsurance as suits themselves. * * * But there is no law which prevents a foreign company from constituting one of those general insurance agencies its agent to transact its business. In this it would, within the meaning of the above-quoted case, confine itself to the business of its principal, and would, notwithstanding it, solicit policies for other companies, become the special agent and representative of the company appointing it.”

On page 142 *et seq.* the Court decided that these foreign insurance companies, represented by specially-authorized agents, were doing business in the State, and, as such, were liable to the tax under the laws of Louisiana, thus affirming the decision and decree of the lower Court by Judge Monroe, now Associate Justice of the Supreme Court. The decisions in 46 An. 939, 48 An. 104 (or the latter case, reversed in 165 U. S. 578), in no wise affect the decisions in 33 An. and 43 An., as in these cases the New York insurance companies had no agent in Louisiana.

Under Section 2, third paragraph, of Act No. 105 of 1898, page 143, any foreign insurance company doing business in the State of Louisiana is required to "appoint as its agent or agents in this State some residents thereof who are citizens of the United States." So that no foreign insurance company can do business in this State without appointing a duly-authorized agent, a resident of the State, and a citizen of the United States.

"A foreign corporation may establish a legal residence in the State wherein it is allowed to conduct or carry on a business. This would be, in the absence of statutory provisions directing otherwise, where the corporation, through its managing agent, executed its powers and transacted its business.

* * * But the corporation or person using the same, having an agent and place of business within the State, may be made liable to taxation therefor at the place of business of the corporation *or residence of the agent.*"

Welty on the Law of Assessments, pp. 112, 114, Sec. 49.

In Note 1, page 113, *City of Dubuque vs. Illinois Central R. Co.*, 39 Iowa, 83, 85, is cited and quoted from as sustaining the text, as follows:

"The rolling-stock of defendant is used in the same way and is governed by the same rules. The manager or agent of defendant for the State, being required to list the property, must do so as though it were his own. His place of business is Dubuque. There his property, were it used in like manner, would be taxable, and there must defendant's be listed and taxed."

So in 46 Fed. Rep. 440, in which case an Illinois company carried on its business through agents in Missouri, who received applications for insurance. These applications were forwarded to Chicago, the domicile of the company, and, when approved, the policies were forwarded to Missouri to the agent, who, on receiving the premiums, delivered the policies to the assured. The Court held that the Illinois company was doing business in Missouri, and said:

"Doing business in this State brings the policy within the operation of its laws, notwithstanding the policy may be signed and the loss made payable in another State. In such cases the company cannot, by any contrivance or device whatever, evade the effect and operations of the law of the State where it is doing business. (*Wall vs. Society*, 32 Fed. Rep. 273.)"

"A foreign corporation can only act through an agent; and, consequently, if an ordinary agent is appointed by the company, and permanently established in the State to carry on the business of the company, the company is doing business in the State. The clearest case of this sort is the appointment of a resident manager for a branch office; but, if the corporation maintains a resident agency, even if it does not amount to a branch establishment, the corporation is doing business; as, when it appoints resident agents to solicit loans, or *insurance*, or to make sales, or purchases of raw materials."

Beale on Foreign Corporations, p. 333, Sec. 206.

"Where, however, the foreign corporation enters upon a continuous line of business, it is doing business within the State."

Ib., 231, Sec. 205.

"Where the agent carries on business in his own name, and on his own account, hiring his office and clerks, and paid, like a factor, by a commission, but differing from a factor in representing the corporation alone, the case is a more difficult one. It has been held in such a case that the corporation is carrying on the business through its agent."

Ib., Sec. 206, p. 334, and authorities cited in notes sustaining its text.

TAXATION OF CREDITS, ETC., OF FOREIGN CORPORATIONS.

In 100 Mass. 531, *Oliver vs. Liverpool & London Life & Fire Ins. Co.*, a Massachusetts statute provided that

"each fire and life and fire and marine insurance company incorporated or associated under the laws of any Government or State other than one of the United States shall annually pay to the Treasurer of the Commonwealth a tax of four per cent. upon all premiums charged or received on contracts made in this Commonwealth for the insurance of property, or received or collected by agents in this Commonwealth."

The constitutionality of this act was assailed, but the tax was sustained. The case went up by writ of error to the Supreme Court of the United States, and your Honors disposed of it (10 Wall. 573) in a very short opinion, in which it was said that

"corporations created by a State could exercise none of the case before us if plaintiff is a foreign corporation in other States of the Union, except by the comity and consent of the latter. This proposition disposes of the case before us if plaintiff is a foreign corpor-

ation, and was, as such, conducting business in the State of Massachusetts,"

and affirmed the decision of the Supreme Court of Massachusetts.

"In other recent cases it has been held that credits, in the form of notes, choses in action and bank accounts, belonging to a foreign corporation doing business in the taxing State, which credits resulted from its business operations in the State, are taxable."

Gray on Limitations of Taxation, p. 70, Sec. 89.

Among the cases cited in the note in support of the text are the two Georgia cases, *Armour Packing Co. vs. Mayor, etc., of City of Savannah*, 41 S. E. Rep. 237, and *Armour Packing Co. vs. City of Augusta*, 45 S. E. 424. In both of these cases, in able opinions, the Supreme Court of Georgia discusses the question of taxation of credits, notes, etc., of foreign corporations doing business in that State under the Georgia laws, and decides that the credits are taxable in Georgia.

"A foreign corporation which is liable for personal taxation for sums invested in business in this State is taxable upon credits and bills receivable which are in this State and are due the corporation for merchandise sold by it in the transaction of business in this State. (*People ex rel. Yellow Pine Co. vs. Barker*, 23 App. Div. 524; affirmed, 155 N. Y. 665.)"

Hammond on Taxation of Business Corporations, Par. 29, p. 22.

"And it is well settled that choses in action, whether book accounts, promissory notes or other credits due in the regular course of business carried on by a foreign corporation within a State, are taxable."

Beale on Foreign Corporations, p. 647, Sec. 488.

In the case of *Monongahela Con. Coal & Coke Co. vs. Board of Assessors*, 115 La. 567, where the coal company, a foreign corporation, received money in cash for coal sold and delivered in New Orleans, and this cash was deposited in bank prior to its being forwarded to the home office of the company at Pittsburg, the Court said:

"While the cash in question was in bank it was liable to assessment. It was equally as liable prior to its deposit, whilst represented by paper due to the local business."

State et al. vs. Hammond Packing Co., 110 La. 186.

"It has been held that a deposit of money in a bank, although technically a credit, is still money for all practicable purposes, and taxable, although belonging to a nonresident."

Cooley on Taxation, 3d (new) Ed., Vol. 1, p. 92; and in the note the following authorities are cited to sustain the text: *In re Romain*, 127 N. Y. 80; *In re Houdayer's Estate*, 150 N. Y. 37; *Schmidt vs. Bailey*, 248 Ind. 159 (47 N. E. 326).

And on page 658 of the same volume:

"Sometimes, also, intangible personal property is by statute made taxable where it may be regarded

as actually located, rather than at the place of the owner's domicile."

And in Note 2 to the text it is said:

"The Legislature may fix the place where personal property, including moneys, credits and investments, subject to taxation in the State, may be listed. (*Brown vs. Noble*, 42 Ohio St. 405; *Sommers vs. Boyd*, 48 Ohio St. 648.)"

MOBILIA SEQUUNTUR PERSONAM.

This doctrine in general terms embraces the principle that the domicile of movable or personal property follows that of the owner, and the laws in force at the domicile of the owner govern the disposition, control and relations of the movable property. The origin of the doctrine has been traced to the civil law, and its application made according to that law. Judge Story in his *Conflict of Laws* (8th Ed.), Chap. 9, and Wharton in his *Conflict of Laws* (2d Ed.), p. 414, Sec. 334, learnedly discuss its origin and its proper application. Wharton says in Section 343:

"If we view that law as now applied, we must admit that the tendency of present authority, as has already been shown, is to deny the proposition *in toto*, and to hold, on the contrary, that all property, movable and immovable, is to be judged of, and determined by, the *lex rei sitae*."

Story does not go as far as Wharton, but says (Note *a*, p. 543):

“**MOBILIA SEQUUNTUR PERSONAM.** The exceptions to the maxim, ‘*Mobilia sequuntur personam*,’ have become so numerous that it cannot be safely invoked for the decision of any but the simplest cases at the present day, if ever, indeed, a case can ever be safely decided upon a maxim.”

Both these authors agree that the principle will only govern when its invocation does not conflict with the positive law of the State where the movables are actually situated. In other words, that it is a fiction of law, which prevails by comity, and it must yield to positive law. It is a singular coincidence that the principle laid down by these authors, and now generally accepted, was first in America applied by the Supreme Court of Louisiana, and was then followed by Courts of the other States and by the Federal Courts. Both Story and Wharton discuss and approve the Louisiana case as the leading case. In 4 M. 20, a sale made, at the domicile of the owner in New York, of movables situated in Louisiana, but without delivery, was held not to protect the property from seizure in Louisiana, although, under the law of New York, the sale was complete without delivery. The decision is short and does not include any general reasoning. The doctrine, however, was reaffirmed in 5 M. 23 and 7 M. 24. In these cases the opinions are brief also, and it is only in 2 M. N. S., which reaffirms the prior decisions, that the Court enters more fully into the question, and declares (p. 79):

“Nor can the foreigner or stranger complain of this. If he sends his property within a jurisdiction

different from that where he resides, he impliedly submits it to the rules and regulations in force in the country where he places it. *What the law protects it has a right to regulate.*" (The italics are the Court's.)

The doctrine is repeated in 17 L. 590. In 8 R. 414, the Court said:

"We consider the doctrine as well settled now that personal property has no locality, and that the laws of the owner's domicile should, in all cases, determine the validity of the transfer or alienation, unless there is some positive or customary laws of this country to the contrary. (Story's Conflict of Laws, Sec. 383 *et seq.*)"

See, also, 42 An. 93, 579; 31 An. 509.

The Louisiana cases cited by us refer to the abolition of the maxim by positive law in cases strictly between citizens of our own and other States.

We have, therefore, thus far only examined and discussed the question as to how far the general principle of "*Mobilia sequuntur personam*" is abolished and done away with in cases where private rights are affected as between citizens of one State and those of another. We think that we have shown conclusively that, in this branch of private international law, the comity by which the principle is respected will not be allowed to prevail where there is positive law conflicting with the laws of the domicile, and the principle would injure or act detrimentally to the interests of the citizens of the State wherein the doctrine was invoked. We now pass on to the larger

question under public international law, where the principle would affect the rights and privileges of the State itself, as in cases of

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doing away with the comity on the question. The jurisprudence of Louisiana will show that the same principle prevails in the public law as in private law. The legacy tax against foreign heirs and legatees, levied by an old law of the State, irrespective of the fact whether the deceased was domiciled in the State or not, has been uniformly sustained by our Courts, notwithstanding the fact that the legacy consisted of movables, and that, immediately on the death of the deceased, the ownership vested in the heir, upon the principle of *le mort saisit le vif*.

2 An. 667; 9 An. 166; 10 An. 391; 12 An. 577;
13 An. 113.

Our opponents may dwell with some force on the *Myer case*, 41 An. 646, in which the Court decided that a judgment could only be taxed at the domicile of the owner, for there alone was it located. We do not dispute the correctness of that decision *under the then existing law* (Act 98 of 1886), for there was nothing in that act doing away with the principle of *mobilia sequuntur personam*. The Court, in that case, especially calls attention to that fact, and says:

“Whether it would lie within the power of the Legislature to direct specifically that judgments be-

longing to resident creditors should be assessed and taxed in the parish where they are rendered, is a question not before us. The statute simply directs that movables shall be assessed where they are located, and, *in the absence of legislative provision to the contrary, judgments, like debts, have their situs at the domicile of the creditor.*" (The italics are our own.)

Thus, the decision turns on the then existing law, which in no wise conflicted with the doctrine of *mobilia sequuntur personam*. The decision in *Paving Co. vs. City et al.*, 41 An. 1017, is "predicated mainly on the Revenue Act of 1888," as are also Sections 6 of the Acts of 1886 and 1888, which are identical in language, and there can be no question that there was in those sections no provision affecting the doctrine of *mobilia sequuntur personam*. Both of them were rendered in 1889, the last in December. It was in order to remedy the defect in the then existing law, as we have already said, that the amendment to the statute of 1888 was passed in Act 106 of 1899. Section 7 of this last corresponds literally with Section 6 of the former acts, but adds thereto the additional *proviso*:

"* * * And this shall apply with equal force to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are

hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative."

This proviso only puts in force a principle which has long been established in the other States of the Union, and maintained as constitutional.

In *Alvanly vs. Power*, 2 Jones Equity (N. C.), 51, a similar law of North Carolina was sustained.

In *Catlin vs. Hull*, 21 Vt. 161, the same rule was upheld, the Court saying:

"Such has been the settled practice in this State, not only in reference to property which is tangible, but also that which is *incorporeal*, such as shares in manufacturing and banking corporations. Such also seems to be the practice in the State of New Hampshire (*Smith vs. Buckley*, 9 N. H. 428), and we have no doubt such is the general practice in many of the States."

The Court then shows the justice and equity of the tax, saying as to non-residents:

"Their property should yield its due proportion towards the support of the Government which thus protects it."

The same doctrine is upheld in 47 Mo. 600; 29 Cal. 533; 40 Mo. 580; 14 Kan. 602. In the Kansas case the Court said in regard to the doctrine of *mobilia sequuntur personam*:

"The weight of judicial authority seems to be that, for the purposes of taxation, the maxim does not fully apply, even *where the property is intangible*."

The same was held in 40 Ill. 198; 2 Duer, 110; 3 N. Y. 390.

Returning to the Louisiana decisions, we next find 44 An. 760, in which the plaintiff here was also plaintiff and the Board of Assessors defendants, and in which the plaintiff was decided to be exempt from taxation on money loaned on interest, all credits, etc. We pretermitt a discussion of this case, which seems to conflict with the principle contended for by us, but will discuss it later on herein. For the same reason we pass for the present 44 An. 767 and 765, as we do also 46 An. In 47 An. 154*, this Court maintained the doctrine we contend for.

We have thus shown that this Honorable Court now support the doctrine that, even as to individual non-residents, the doctrine of *mobilia sequuntur personam* yields to positive Federal and State legislation in questions of taxation. The principle becomes much stronger when applied to foreign corporations. That principle is that THE MAXIM IS NOT APPLICABLE TO THE FOREIGN CORPORATIONS, ESPECIALLY NOT TO FOREIGN INSURANCE COMPANIES, even if it were granted that our contention hitherto made could not be sustained, and that the doctrine of *mobilia sequuntur personam* could not be abolished by positive statute, in so far as non-resident persons or individuals are concerned; then there is another principle which entirely differentiates the case of foreign insurance companies doing business in the State.

It has been uniformly decided that a State has a right to entirely exclude a foreign insurance company from

doing business within its borders, or that it can impose such taxation as it sees fit.

In 165 U. S., the Supreme Court sustained a State tax on the proportion of capital of a non-resident express company, which its property in Ohio represented, and "that the distribution among the several counties is a matter of State regulation."

In 166 U. S. 154, the Court again said:

"The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky in reference to taxation. And for the reasons given, and on the authorities cited in *Adams Express Co. vs. Ohio State Auditor*, 165 U. S. 194, we are unable to conclude that the method of taxation prescribed by the State of Kentucky and followed in making this assessment is in violation of the Constitution of the United States."

In the fuller statement of the case, page 156, by the dissenting Judges, it is said that the tax statute includes

"the intangible property of such corporations, which property—that is, the intangible property, whether situated in or out of the State—shall be considered and estimated in fixing the value of the corporate franchises."

In *Parke, Davis & Co. vs. Comptroller of New York*, hereinbefore referred to, the Supreme Court of the United States sustained a State tax on the business and franchise of a Michigan corporation manufacturing drugs in the City of Detroit, but doing business in the City of New York.

No civilized nation to-day allows foreigners or foreign corporations to come into its country and do business and drain the money out of its own state without paying the same taxes as its own citizens. No rule of comity is allowed to prevail, whereby the foreigner can have the protection of a country, its laws, its courts, its police, its fire department, etc., and be relieved from paying the taxes for the protection afforded the same as a citizen and a resident. To do so, would be to discriminate against its own citizens, and to throw nearly all the business into the hands of foreigners, who could thus carry on business on better terms than the residents of the State. To do this would be a political economic suicide.

The effect of the principle contended for by our opponent would lead, in our opinion, with due respect to *State jelo de se*, inasmuch as it allows non residents to do business in Louisiana and put their credits in such shape as to avoid the direct tax, which our own citizens pay, thus allowing millions of dollars to be withdrawn from the State each year without paying a cent of direct taxation, for the protection of its business, etc. With this advantage, some five or six hundred foreign corporations are to a great extent monopolizing certain lines of business to the exclusion therefrom of our own citizens. Of the 125 insurance companies doing business in this State, 122 are foreign companies, and only three are home companies.

That "constitutional requirements themselves do not stand in the way" in the modifying or destroying of the

doctrine of "*mobilia sequuntur personam*" by a positive State statute is plain. On the contrary, there is an especial provision in the Louisiana Constitution of 1898, in Article 242, which provides that:

"Corporations, companies or associations organized or domiciled out of the State *but doing business therein*, may be licensed and taxed by a mode different from that provided for home corporations or companies," etc.

Now, here is a distinct and especial authorization to tax foreign corporations doing business in the State, and heretofore we have shown what is to be deemed "doing business" in the State, and the method of taxation thereon, including credits, etc. That there is no conflict with any provision of the United States Constitution and its amendments, we have already shown, and it is, therefore, not necessary to repeat here the authorities cited thereon.

In the case of *Bluefields Banana Co. vs. Board of Assessors*, 49 An. 48, the Court said:

"The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the State, which, by its terms, brings them under the operation of State and city taxation, and we are bound to give effect to its provisions unless they be in derogation of the Constitution. The unconstitu-

tionality of the act is not pleaded, and we, of ourselves, see no unconstitutional features in it. The rule, *mobilia sequuntur personam*, is a fiction of the law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case where constitutional requirements themselves do not stand in the way."

This principle was reaffirmed in the case of *Tax Collector vs. Strauss & Co.*, 49 An. 1175.

In 52 An. 1331, the Court said:

"We think the facts of this case bring it squarely under the decisions in *Blackfields Banana Co. vs. Board of Assessors and City of New Orleans*, 49 An. 43, and *Parker vs. Strauss*, 49 An. 1173. In the former case this Court, referring to the corporation claiming exemption, said," and goes on to quote the passage from the *Blackfields Banana* case which we have transcribed above.

Now, in *Metropolitan Life Ins. Co. vs. Board of Assessors*, 115 La. 707, the Court said:

"In *Blackfields Banana Co. vs. Board of Assessors*, reported in 49 An. 43, 25 South, 627, the rule, '*mobilia sequuntur personam*,' was declared to be a fiction of the law, not resting of itself on any constitutional foundation and which gives way before express law, destroying it in any given case where constitutional requirements do not stand in the way.

* * * We see no reason to alter the view so announced. We believe they are in accord with generally accepted judicial opinion. In *Blackstone vs. Miller*, 188 U. S. 126, 23 Supreme Court, 277, 47 La. Ed. 439, the Supreme Court of the United States, referring to the maxim, *mobilia sequuntur personam*, said that, 'when logic and the policy of the State con-

flict with a fiction due to historical tradition, the fiction must give way.' There can be no doubt that the seventh section of the Act of 1898, quoted in the judgment of the District Court, announced the policy of the State touching the taxation of credits and bills of exchange, representing an amount of the property of non-residents, equivalent, or corresponding to said bills of credit, which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to *do away with the discrimination theretofore existing in favor of non-residents as against residents, and place them on an equal footing.* The statute was not arbitrary, but a legitimate exercise of legislative power and discretion.

"It is not contested that the State has the right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligations to accept the terms; but, if they do accept them and carry on business in the State, they must comply with them. They cannot avail themselves of the benefits of the consent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation, as well as to anything else. When foreign corporations come into the State for business purposes, they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State and accept and subject themselves to the laws thereof.

"As was said in *Bluefields Banana Co. vs. Board of Assessors*, these foreign corporations do business in Louisiana, transact their business precisely as do resident business men and corporations. They derive all the advantages from the State and city governments which residents receive, and we can see no

reason why they should not be taxed as claimed, unless there be insuperable legal objections in the way."

The following is taken from the opinion of Judge Ellis, Division A, Civil District Court of the Parish of Orleans, in the *Monongahela River Con. Coal & Coke Co. vs. Board of Assessors et als.*, speaking of Sec. 7, Acts of 1890 and 1898:

"The object of the General Assembly is to place non-residents *doing business in Louisiana* on the same footing as its own citizens. It was notice to non-residents that, if they engaged in business here under the protection of our laws and government, their business, or its capital, cash, or credits, open accounts, bills receivable, credits, etc., should be assessed. It was the avowal of the policy of the State that non-residents doing business here could not reap their profits in money, and ship the money away to the foreign domicile without contributing to the support of the Government—which had protected their business and enabled them to realize and collect its avails and profits—at the same rate of taxation to which our own citizens are subjected.

"It was the plain declaration of the political branch of the State Government that the fiction, '*mobilia sequuntur personam*,' should no longer be applied to shield from taxation non-residents who *established business domiciles here* and conduct *business here* in competition with our own citizens. The law, as it stood prior to the act of 1890, as construed by the jurisprudence, was a plain discrimination in favor of non-residents and against our own people. Since the law of 1890 and 1898, the business of non-residents and the business of our own people are put upon the plans of perfect equality so far as liability

for assessment and taxation of credits resulting from business done in this State are concerned. There is no discrimination against citizens of other States that would antagonize the provisions of the Federal Constitution, and the Supreme Court of the United States has sustained the right of the States to sweep away the fiction '*mobilia sequuntur personam*' when it stands in the way of taxing credits which result from a business *domicile localized and carried on* in such States by non-residents. (*State Board of Assessors vs. Comptoir Nationale*, 191 U. S. 388.)

"Professor Minor in his 'Conflict of Laws,' C. H. X. 120, page 270, says: 'The legal *situs* of chattels is the *situs* of the owner, but, as has been shown in a previous section, the owner may possess far different purposes—two different localities at the same time. For some purposes, the actual *situs* of the person at a given time will furnish the applicatory law (though he resides in another State). It will be remembered, also, that the *actual situs* of the person looked to, whenever the transaction to which the law of his *situs* is applied, is *voluntarily and deliberately* entered into by him, because he deliberately submits himself to the sovereignty of that State, which is complete within its own territory, which a just and proper comity demands should be respected in other States.' "

But stronger than all this is the opinion of your Honors in the case of the *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S. 395, where it is said:

"We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed a local agent to conduct

that business. It was conducted under the laws of the State. The State undertook to tax the capital employed in the business, precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed it caused the credits arising out of the business to be assessed. We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances they have a taxable *situs* in the State of their origin. The judgment of the Supreme Court of Louisiana is affirmed."

Blackstone vs. Miller, 188 U. S. 189; *Bristol vs. Washington County*, 177 U. S. 133; *State Assessors vs. Comptoir*, 191 U. S. 388; *New Orleans vs. Stempel*, 175 U. S. 309, and other cases are cited.

The complainant in the lower court cited, and seemed to draw some comfort from, the case of *Buck vs. Beach*, 206 U. S. 392. We, on the other hand, respectfully submit that any lingering doubt in your Honors' minds as to the right of the State of Louisiana to tax the credits involved in the case at bar will immediately be dispelled upon reference to that decision, the dissenting opinion, and the briefs of counsel thereon.

In that case, notes taken in *Ohio*, as a result of business done in that State, were held in *Indiana*, and *Indiana* attempted to tax them. The Court held that *Indiana* had no right to do so, and, we submit, properly. *Indiana* had no jurisdiction over the business done in *Ohio*, where the

credits which were evidenced by the notes had their *situs*. That *Ohio* could have taxed these credits is manifest throughout the whole decision, and, in the case at bar, Louisiana cannot be likened to Indiana, but to Ohio, where the business was located. We cite the case of *Buck vs. Beach* as entirely sustaining our position.

The fourth assignment of error is as follows:

“The Court erred in holding that the increase of the assessment from \$1,000, as returned by the complainant, to \$51,700, as made by the Assessors, so as to include in the assessment the average balances in No. 1 *Bank Account*, is illegal.”

The facts are that the insurance company has two bank accounts in the City of New Orleans, said accounts being known as “No. 1 Bank Account” and “No. 2 Bank Account.” No. 1 bank account is drawn on by the home office exclusively, and the Louisiana agent of the insurance company has no control whatever over this account. No. 2 bank account is under the control of the Louisiana agent of the insurance company. The Court held that No. 2 bank account was properly assessable, but that No. 1 bank account was not assessable. As authority for holding that No. 1 bank account was not assessable, the Court referred to the case of *Metropolitan Life Insurance Co. vs. Newark*, 62 N. J. L. 74. As against this New Jersey case, we beg to refer the Court to two cases decided by the Supreme Court of Louisiana which would control as construing the Louisiana statute.

In *Bluefields Banana Co. vs. Assessors*, 49 An. 43, the syllabus is as follows:

“A foreign corporation had an agent here, where it received and where it sold fruit, and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent; also for the prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident businessmen and firms. *Held*, an assessment of the cash in bank of said corporation is proper and warranted by the provisions of Act No. 106 of 1890, an act to provide an annual revenue for the State. The rule, ‘*mobilia sequuntur personam*,’ is a fiction of the law, not resting of itself upon any constitutional foundation, and which gives way before express law.”

Again, in the case of *Parker, State Tax Collector, vs. Strauss et al.*, 49 An. 1173, the Court said:

“The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of the foreigner. We cannot hold that cash thus liable to taxation is exempted because, for convenience, it is deposited in bank and checked on by the owner.”

The section of the Act of 1890 construed by the Courts in the foregoing decision is identical in terms with that of the Act of 1898, under the authority of which the present assessment was made. These two decisions dispose of this question so far as the intent of the Legislature, as

construed by the Supreme Court of the State, is concerned.

There has not been suggested any provision of the Constitution of the United States that prohibits the imposition of the tax on any cash in bank belonging to a foreign domiciled corporation. We respectfully submit that this Court will be guided in the construction of the Louisiana statute not by the decision of the Supreme Court of New Jersey, referred to by the Judge *a quo*, but to the cases in which the Supreme Court of Louisiana has construed the statute. The Court *a qua*, however, makes the statement that the Supreme Court of Louisiana, in the two cases above referred to, seemed to be influenced in their opinion by the fact that the local bank account was subject to being drawn upon by the local agent of the foreign owner. While it is true that the No. 1 Bank Account in the case at bar is different, with respect of the authority of the local agent to draw thereon, from the cases decided by the Supreme Court of Louisiana and herein referred to, we submit that the statute of Louisiana makes no distinction of the sort suggested by the Court *a qua*, nor do we believe that a reading of the decisions will disclose that the Supreme Court of Louisiana was influenced in its decision by the fact that the local representative of the foreign owner of the cash in bank could draw thereon.

In connection with the assessment of the two bank accounts, the same observation may be made as in the case of the assessment of the credits—that is, that these as-

sessments are not levied primarily upon any forms or items of property, but upon the capital used by the foreign domiciled owner in the transactions of its business in the State of Louisiana. As the credits arise from that business, so does the cash in bank arise from that business, and it is the duty of the assessor, in reaching a figure that would fairly represent the total investment of the foreign domiciled concern in the conduct of its business within the State of Louisiana, to include in his estimate all of the items that show property in this State, however permanently or however transiently, which items of property come into the State, or are in the State, as a result of the prosecution of that business.

In the case of *Metropolitan Life Insurance Company vs. Board of Assessors*, which we have already referred to herein, Mr. Justice Moody, the organ of this Court, clearly pointed out the fact that the assessment after all was not upon separate items of property, but upon the capital owned and used in this State by the foreign domiciled concern, and that the mention of the items was simply a method of arriving at the extent of that capital.

We therefore respectfully submit that the Legislature of the State of Louisiana has enacted statutes which impose a tax upon the capital of the New York Life Insurance Company used in Louisiana in the conduct of its business in that State, and that, in arriving at the amount of said capital, it was proper for the assessors to take into consideration both the credits, money loaned, bills

receivable, of the complainant, as well as its cash in bank, whether permanently in bank or transiently there.

We further submit that there is no provision in the Constitution of the United States that takes away from the Legislature of the State of Louisiana the right to impose a tax upon the capital of the New York Life Insurance Company, which is used in the business of said company in the State of Louisiana, and that, therefore, the judgment rendered herein by the Court *a qua* should be avoided, annulled and reversed, and that the injunction should be dissolved, and that complainant's bill should be dismissed with costs and counsel fees provided for in the answer herein filed, under Section 57 of Act 170 of 1898 of the Legislature of Louisiana.

All of which is respectfully submitted.

GEO. H. TERRIBERRY,

Solicitor for Board of Assessors.

H. GARLAND DUPRE,

Solicitor for City of New Orleans.

HARRY P. SNEED,

Solicitor for State Tax Collector.

APPENDIX.

Act 170 of 1898:

“SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That for the calendar year A. D. one thousand eight hundred and ninety-eight (1898), and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by law, and the term ‘property,’ as herein used, means and includes all real estate, with the buildings and other improvements thereon or thereto attached, and all other untaxed land; every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatever name or description, used or designed to be used, either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such vessel, ship or boat shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector’s office or within any collector’s district in this State or not, including all vessels under a foreign flag navigating any of the waters of this State, within or bordering thereon, controlled or run, in whole or in part, for the benefit of the person to be assessed, together with their stores or appurtenances, at their fair market value, or belonging to any person, company, association or corporation, in or out of this State,

and not paying taxes at the domicile of said company, person, association or corporation; all railroads and other roads, all canals and other ways of communication, travel or transportation, all locomotives, dummies and other motive powers; all engines, boilers and other apparatus, appurtenances, appliances and attachments for steam, electric and other engines; all telephone and telegraph lines; all machines and machinery; all cars, carriages, wagons and other vehicles; all patents, copyrights, trademarks, privileges, charters and franchises, including stock of any lottery, charter or privilege domiciled in or out of this State, unless exempted by the Constitution of this State; all lumber, brick and other building materials; all movable property and chattels; all personal property; all goods, wares and merchandise, and other stock in trade, in possession, on hand and under control, goods bought and paid for, goods bought and to be paid for, all goods on consignment for sale, without reference to whom they belong; goods in transit for forwarding, not on consignment for sale, are not to be assessed; all alcoholic, vinous and malt liquors; all household, kitchen and other furniture exceeding five hundred dollars (\$500) in value; all jewels and jewelry, diamonds, pearls and precious stones, real or imitation; all gold- and silverware and silverplate, paintings, engravings, statuary and other works of art, bric-a-brac, and all 'articles of vertu' and ornament; all horses and other live animals; all personal property held in trust, or by a wife, or for a minor child; all property held, controlled, or administered in each

separate capacity as president, cashier, treasurer, liquidator, assignee, master, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depository, warehouseman, keeper, curator, tutor, executor, administrator, legatee, heir, beneficiary, father, agent, attorney, usufructuary, mandatary, fiduciary, or official capacity; the cash value of all judgments; suits and causes in action; all rights, credits, bonds and securities of all kinds; promissory notes, open accounts, and other obligations; all cash; all coins, United States and foreign, whether current or uncurrent; all currencies, bank notes, and other paper moneys; all moneys loaned at interest; all shares of stock in all banking companies or associations incorporated or nonincorporated, chartered under the laws of Louisiana, or under the laws of any other State than Louisiana, or under the laws of the National Government; and all movable and immovable, corporeal and incorporeal articles or things of value, owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever.

“The amount of cash on hand will not be offset or lessened because money is owed or by liabilities of any kind, but must represent the full amount standing in the name of the person to be assessed or subject to his control; provided, that no articles or things hereinabove enumerated shall be assessed more than once the same year. The above enumeration of assessable property is in no wise intended to apply to the assets of banking companies or associations whose shares of stock are assess-

able in lieu thereof under Section 27, save in so far as declared in said Section 27.

* * * * *

“SEC. 7. *Be it further enacted, etc.,* That it is made the duty of the Tax Assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and if any tax assessor shall intentionally or knowingly, or through gross negligence, omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties *in solido* shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment recovered against him, and all costs of the suit; provided, that the true intent and meaning of this section is that all crops, whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in possession of the lessor or his agent, and no property shall be taxed twice in the same year; and provided, further, that in assessing mercantile firms the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, em-

ployed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no nonresident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said nonresident, his agent or representative. It shall be the duty of the assessor to examine into and acquaint himself with the insurance carried upon the property, and in determining the value of said stock or assets the average amount of insurance carried by the assured during the twelve months preceding the date of valuation of same shall be by the assessor considered in determining the value of said property.

“Every insurance company doing business in this State shall, on or before the first day of March, in each year, render to the Secretary of State a report, signed and sworn to by its president and secretary, of its condition upon the preceding thirty-first day of December, which shall include a detailed statement of its assets and liabilities on that day; the amount and character of business transacted in this State, moneys received and expenses during the year and such other information and in such form as he may require.

“The assessor shall also inquire into the purchase price paid for the real property when acquired by the owner, and ascertain and acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made; and the price paid for property at such sales or transfers shall be considered by the assessors in determining the value of the real property to be listed for assessment.”

“Sec. 91. Paragraph 4: The term ‘credit’ includes every demand for money, labor, merchandise and other valuable things.”

JAN 18 1910

JAMES H. MCKENNEY,

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1909,

No. 112.

THE BOARD OF ASSESSORS OF THE PARISH OF
ORLEANS in the City of New Orleans, *et al.*,
Appellants-Defendants,

vs.

NEW YORK LIFE INSURANCE COMPANY,
Appellee-Complainant.

BRIEF FOR THE APPELLEE.

Appeal from the Circuit Court of the United States
of the Eastern District of Louisiana,
Honorable Eugene D. Saunders,
Judge.

CHARLES S. RICE and
RICHARD B. MONTGOMERY,

Solicitors for Appellee

JAMES H. McINTOSH,

Of Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1909,

No. 112.

BOARD OF ASSESSORS OF THE
PARISH OF ORLEANS, *et al*,
Appellants-Defendant,

vs.

NEW YORK LIFE INSURANCE
COMPANY,
Appellee-Complainant.

Brief for
Appellee.

BRIEF STATEMENT OF THE ISSUE.

MAY IT PLEASE THE COURT,—

This is an appeal from a decree entered in the Circuit Court of the United States for the Eastern District of Louisiana in a suit in equity in said Court in which New York Life Insurance Company, appellee here, was complainant and the Board of Assessors of the Parish of Orleans and others, appellants here, were defendants, enjoining the defendants from collecting certain taxes for the year 1906 levied against the Company, on the ground that the defendants had no jurisdiction

over the property on account of which they imposed the tax, also that said property was not taxable property, and therefore that said taxes were illegal and void.

In the year 1906 the Company, without protest or objection, paid taxes, licenses and fees within the State of Louisiana aggregating \$11,168.75. In addition to the taxes so paid, however, the defendants undertook to impose upon and collect from it other and further taxes for the year 1906, aggregating the sum of \$17,370.82.

They sought to impose this additional tax by arbitrarily placing the company on the assessment roll as the owner of taxable property within the Parish of Orleans, consisting of "Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold" of the value of \$568,900, and by arbitrarily increasing the item of taxable property contained on the Company's sworn return for taxation consisting of "Money in Possession on Deposit, or in Hand" from \$1,000 as returned by the Company to \$51,700, and imposing a tax thereon accordingly.

During the procedure leading up to the levy of this tax the Company for its protection exhausted all the remedies afforded it by the laws of the State. After the levy of the tax, it commenced this suit to have said tax, in so far as it was based upon said assessed valuation of \$568,900 for "Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold" and in so far as it was based on said assessed valuation in excess of \$1,000 for "Money in Possession, on Deposit or in Hand," decreed to be illegal, void and of no effect, basing its right to this relief upon the ground,—

First, That the Company in said year did not have within the territorial jurisdiction of the defendants and taxable therein, Money Loaned on Interest, Credits and Bills Receivable for Money Loaned or Advanced for Goods Sold of the value of \$568,900, *or of any other value*; and *second*, that the Company in said year did not have within the territorial jurisdiction of the defendants Money in Possession on Deposit or in Hand of the amount or value of \$51,700, or any other sum except the sum of \$1,000 as duly returned by the Company for taxation.

The Court heard and considered the case upon the pleadings, the evidence and the arguments of counsel, and after taking it under advisement, found the equities in the case for the complainant and against the defendants and entered a decree as prayed in complainant's bill.

THE PLEADINGS.

I.

The Bill of Complaint.

Jurisdiction is invoked both on the ground of diverse citizenship and on the ground that the controversy arises under the Constitution of the United States, and especially under the Fourteenth Amendment thereto which prohibits a State from depriving any person of his property without due process of law or denying to any person within its jurisdiction the equal protection of the law.

The bill alleges,—

First.—That the complainant is a New York corporation transacting the business of life insurance, domiciled in the City of New York, and that the defendants are the Board of Assessors of the Parish of Orleans, the State Tax Collector for the First District of New Orleans, and Treasurer of the City of Orleans.

Second.—That the complainant has never maintained any office in Louisiana except an office in the City of New Orleans, and a like office in the City of Shreveport, each in charge of a special agent called a Cashier, and used by the complainant solely as a convenience in communicating with the complainant in respect to obtaining new insurance and collecting renewal premiums on existing insurance; that for said purposes the New Orleans office has jurisdiction in that part of the State lying south of the thirty-first degree of North latitude, and the Shreveport office the remainder of the State. “For convenience said offices are called Branch Offices, but their functions are limited as aforesaid. No money has ever been loaned on interest, nor credits created, nor bills receivable for money loaned or advanced for goods sold have ever been taken by your orator in or through said offices, or ever kept or deposited there.”

Third.—The complainant has never had within said State any representatives except special agents with limited power and authority, as follows:

1. Special soliciting agents with authority limited to soliciting applications for new insurance,

collecting the first premium on policies issued on applications taken by them, and delivering the policies.

2. Medical examiners, with authority limited to making the customary medical examinations of applicants for insurance.

3. Agency Directors, with authority limited to employing new soliciting agents and assisting them in their work.

4. A Supervisor or Inspector of Agencies, with authority limited to supervising the work of the Agency Directors and managing the details relating to obtaining new insurance.

5. A Cashier in each Branch Office "with authority limited to making and supervising the making of such records as the business of said Branch Offices requires, to mailing to the persons residing within the said jurisdiction of their several offices such premium notices as your orator makes out at its Home Office and sends to them for that purpose, to receiving from soliciting agents and from medical examiners within said territory tributary to their respective offices applications for new insurance and medical examinations for transmission to your orator at its Home Office, to receiving from your orator's Home Office report of your orator's action on such applications and receiving from your orator and transmitting to the soliciting agents new policies of insurance, to receiving such first premiums as are paid on such new policies as are written and placed within said territory tributary to their respective offices, and to receiving renewal premiums from policyholders within said territory

whenever they are specially authorized by your orator so to do, all of which said premiums it is the duty of the Cashier at once to deposit to the credit of your orator in the local bank at which it does business, as hereinafter more fully stated, to keeping account of the insurance obtained by the several soliciting agents reporting their business through his office and paying such soliciting agents their commissions earned in obtaining new insurance, and to such other acts and transactions as are incident to obtaining new insurance and collecting renewal premiums on old insurance. Said Cashiers have no power or authority, nor have they, nor has any other person for your orator within said State of Louisiana, any power or authority, nor have they or any one of them ever had any power or authority, to loan money for your orator on interest, to create credits, or to take bills receivable for money loaned or to receive money advanced for goods sold; that no one of said agents or any other person within the State of Louisiana now has or ever has had any power or authority on behalf of your orator to make, alter or discharge any contract, or to invest the funds, or any part thereof, of your orator, or otherwise, or to represent your orator in any capacity except as hereinbefore stated, and except such acts and transactions as are incident to the powers of said several agents herein described."

Fourth.—That the complainant has for years been engaged in the business of life insurance, and regularly admitted to transact said business in said State and elsewhere, and duly made the reports to said State required by its laws.

Fifth.—That on the 25th day of January, 1906, complainant made in the Parish of Orleans due return of its property for taxation, which said return fully and correctly stated all and singular the property of the complainant situated within said Parish of Orleans, and representing in their aggregate a fair average on the capital, both cash and credit, employed in the business of the complainant within said Parish of Orleans and the territory tributary to said New Orleans office of the complainant, thereby showing no property in said jurisdiction except “Money in Possession, on Deposit or in Hand, of the value of \$1,000, and office property of the value of \$500”; that except the property so returned by the complainant for taxation, “your orator did not then, nor at any time for more than one year theretofore, nor at any time since, did it have any other rights, credits, bonds or securities of any kind, promissory notes, open accounts or other obligations, or money loaned at interest, or any movables or immovables, corporeal or incorporeal articles or things of value owned or held or controlled within said State of Louisiana by your orator in any capacity whatsoever, except your orator’s money in possession, on deposit or in hand at Shreveport and its office property there.”

Sixth.—That said Board of Assessors, disregarding the complainant’s said tax return, arbitrarily placed the complainant on said assessment roll as taxable within said Parish for Money loaned on Interest, all Credits and all Bills Receivable for Money loaned or advanced for Goods Sold of the amount and value of \$568,900; and as taxable within said Parish for Money in Possession, on Deposit or in Hand, of the amount and

value of \$51,700, instead of \$1,000 as returned by the complainant, making a total assessment of \$621,100, instead of \$1,500 as returned by complainant.

Seventh.—That the complainant duly appeared before the Board of Assessors and asked for correction of said assessment by reducing the amount thereof to said sum so returned by it, which was denied.

Eighth.—That the complainant appeared before the Budget and Assessment Committee of the City Council of New Orleans, and asked for a review and correction of said listing and valuation, which was denied; and that thereupon a tax of six mills for State purposes and twenty-two mills for city purposes was levied on said assessment and valuation, making a total tax of \$17,370.82; and that the complainant duly tendered payment of the taxes justly due, which the defendants refused.

Ninth.—That all that part of said taxation in excess of the amount thereof imposed on the property and valuation as returned by the complainant, is void, and would deprive the complainant of its property without due process of law, for that,—

“1. The complainant did not at the time of said assessment, nor at any time prior thereto, nor has it now within said State of Louisiana, or subject to assessment or taxation therein, any Money Loaned on Interest, or Credits or Bills Receivable for Moneys Loaned or Advanced for Goods Sold. Your orator is informed and believes,

and upon information and belief states, that said taxing authorities assessed and taxed your orator on said item of Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold under the claim of right so to assess and tax your orator for that your orator has made advances in the nature of loans to some of its policy-holders who reside within said State of a part of the accumulated value of their respective policies, but your orator disputes said claim and denies said right, and avers that the following fully and truly states all the facts in respect to your orator's said advances to its policy-holders and its dealings with them, and forms the sole basis of said claim of right so to list your orator's property and to assess and tax your orator as aforesaid, to wit:

“(a) Numerous citizens of said State are insured in your orator under policy contracts which provide that the insured may obtain cash loans from your orator upon the pledge of the policy and its accumulations as collateral security for the loan in accordance with the terms contained in the Company's then existing form of policy loan agreement, the loan to be for such sum as is stated in the policy and to bear interest at 5 per cent. per annum payable annually; and your orator, pursuant to said terms of its policies, had made to sundry of its policy-holders, who at the time of said assessment were then, and theretofore had been, residents of said State, such policy loans which then were and still are outstanding. Said loans, however, were not, nor were any of them, made within the State of Louisiana, nor was the money so advanced by your orator paid

there, nor were any of the papers in connection therewith ever kept on file within said State, nor was the same in any manner or form a Louisiana transaction so as to give the same a *status* there for purposes of taxation or otherwise, nor was your orator there subject to taxation by reason thereof.

"The application for each and every such advance or loan together with the proposed loan contract executed in duplicate and the policy upon the pledge of which the loan was to be made, was forwarded by the applicant either directly or through the medium of your orator's Cashier at its local office within said State and through the mails to your orator at its Home Office in the City of New York, where your orator maintains a department known as the Division of Policy Loans, which alone is authorized by your orator to make, and makes, such loans. At your orator's said Home Office each and all of said applications, loan contracts and policies were there inspected and passed upon by its said Division of Policy Loans, and if found to be in due form and to warrant the loan as applied for, then said application was, at said Home Office, there and then accepted, and said Division of Policy Loans retained one copy of said loan agreement together with said policy, and transmitted by mail to the borrower a duplicate copy of said loan agreement together with an order on your orator's bankers in the City of New York for payment out of your orator's funds on deposit in said bank in said City of New York to said borrower of the amount of said loan less any prior indebtedness on the policy or any unpaid premium; that thereafter said borrower duly presented said order at your orator's said bank in the City of New York and there and then re-

ceived from said bank the amount thereof. Said loan agreement and policy contracts were in each and every such case, at all times after the loan application was accepted, retained by your orator in its said department of Policy Loans at its Home Office and none of them was ever again returned to said State unless the policy-holder first paid to your orator in cash at its Home Office the amount due on the loan, or unless the indebtedness was settled at the Home Office by deducting the amount of it from the reserve on the policy and giving the policy holder non forfeiture benefits for the excess of the reserve, if any. In either such case the policy and only the policy was returned to the policy-holder and not otherwise, and such was the agreement of the parties. Your orator has not now, nor has it ever had within the State of Louisiana any evidence of any indebtedness for advances or loans on the pledge of its policies as security.

"Both the principal of said loans and the interest is, and always has been, payable to your orator at its Home Office in the City of New York and is there collected by it. Whenever default occurs, or hitherto has occurred, in the payment of the interest on any one of said loans, it is, and always has been, the custom and practice of your orator to settle the amount due thereon, principal and interest, by satisfying the same at your orator's office in the City of New York, pursuant to the loan contract in such case made and provided. Or if the policy pledged as security lapses or is forfeited, or matures, or becomes a claim by death, the amount of said loan is, and always has been, satisfied at the Home Office of your orator in the City of New York out of the reserve on the policy in case of lapse or forfeiture, and out of the

amount payable under said insurance contract in case of maturity of the policy or the death of the insured. Your orator has never resorted to the Courts of Louisiana for the the collection of any one of said loans and does not anticipate doing so—for the policy pledged as security for the loan, to which alone your orator looks for repayment of the loan, is in every instance adequate security, the value thereof is in your orator's custody and control at its said Home Office in the City of New York, and the policy and the loan agreement adequately provide for the satisfaction of the indebtedness out of the value of the policy. In truth and in fact neither your orator nor the policy-holder regards said transaction as an ordinary loan transaction, but regards it as an anticipated payment of a part of the accumulated value of the policy, and such your orator believes and understands it to be."

(b) A further claim of right to assess the complainant on said item of Money loaned on Interest, all Credits and all Bills Receivable for Money loaned or advanced for Goods Sold, is based upon the fact that after policies acquire a certain value by the payment of premiums "your orator has sometimes accepted from such policy-holders the written promise of such policy-holders—called by your orator for convenience a Premium Lien Note—to pay said premium to your orator at its Home Office in the City of New York, with interest, said policy-holder in and by said written promise agreeing with your orator that if any premium on said policy or any interest on said note is not paid when due, said note shall thereupon immediately become due and payable, with interest, and shall, without notice of any kind, be paid by de-

ducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due, and that in the settlement of any claim or any benefit under the policy before said note shall have been paid, the amount thereof shall be deducted from the amount otherwise payable to your orator.

"At the time of said assessment, sundry of your orator's policy-holders residing within said State of Louisiana had theretofore settled annual premiums on their several policies by giving your orator said Premium Lien Notes, each and all of which your orator received from them, held, and finally collected, or, when the amount thereof should become collectible, would collect as follows, to wit:

"At or about the time of the maturity of that premium in settlement of which in whole or in part your orator finally received such Premium Lien Note, the policy-holder made application to your orator at its Home Office in the City of New York, where your orator maintains a department known as the Note Division of the Comptroller's Department for the purpose of negotiating and making such agreements, by mail either directly or through the medium of your orator's said local Cashier, for the privilege of settling such premium in whole or in part by giving your orator such Premium Lien Note upon your orator's customary form. Whenever any such application was received at your orator's said Home Office, your orator's said Note Department there and then ascertained from your orator's Actuary's Department at its said Home Office whether or not said policy had a reserve value that would

warrant your orator in receiving a Premium Lien Note in settlement in whole or in part of such premium, and if it had, said Note Department there and then drew up said premium lien note on your orator's customary form, complete in all respects except as to the signature of the maker, and forwarded it through the mails either directly to the policy-holder or through the medium of said local Cashier for signature and return, accompanying the same with a letter stating that the Company would accept such lien note in settlement in whole or in part of said premium, interest to be paid in advance. As soon as the policy-holder signed said note he then forwarded the same to your orator at its Home Office in said City of New York by mail either directly or through the medium of your orator's said local Cashier, which said note was in each and every case received by your orator at its said Home Office in due course of mail after the date of its execution, and your orator there and then at its said Home Office retained and kept said note on file in its said Note Department, and in no instance was any one of said notes ever again returned to the State of Louisiana. But if said Note Department ascertained that the reserve value of said policy would not sufficiently secure the payment of the sum to be named in said note, then your orator at its said office there and then declined each such application.

“Your orator has not now, nor has it ever had within the State of Louisiana, any Money Loaned on Interest, any Credits or Bills Receivable for Money Loaned or Advanced for Goods Sold evidenced by any such Premium Lien Notes or any other note. Both the principal of each and all of said Premium Lien Notes and the interest was,

and is, and always has been, payable to your orator at its Home Office in the City of New York. Whenever default occurs, or hitherto has occurred, in the payment of any premium on the policy in respect of which your orator has received a Premium Lien Note or interest on such note, it is, and always has been, the custom and practice of your orator to collect, and it has without any exception, collected the amount of said note at its said Home Office in the City of New York pursuant to the contract therein contained, by satisfying the same out of the reserve on said policy; or, if the holder of such policy or the beneficiary thereunder became entitled to the settlement of any claim or any benefit thereunder, it is, and always has been the custom and practice of your orator to collect, and it has, without any exception, collected such premium lien note by deducting the amount due thereon from the amount otherwise payable under said policy contract. Your orator has never resorted to the Courts of Louisiana for the collection of any one of said notes and does not anticipate doing so, for the reserve on said policy in the event of lapse and the amount payable thereunder in the event the same becomes a claim either by death or otherwise, is always sufficient to satisfy the amount of said note and interest, and your orator looks alone to the reserve value of the policy or to the death or other benefits payable under it for repayment thereof at its said Home Office, said value being at all times in your orator's custody and control at its said Home Office in the City of New York, and said note agreement adequately providing for so satisfying the amount payable thereon.

“That said policy loan and premium lien note transactions were the sole basis for assessing and

taxing the complainant on said item of Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced for Goods Sold."

2. That said item of Money in Possession, on Deposit, or in Hand, valued at \$51,700 instead of \$1,000 as returned by the complainant, was without warrant of law, because the complainant never had any such amount of money in possession, or on deposit, or in hand in New Orleans, the facts in that behalf being as follows:

The complainant maintained two bank accounts in said city, known as Number One Account and Number Two Account. To the credit of said Number One Account the local Cashier daily deposited all moneys received by him for your orator, except such sum as he was authorized to and did deposit to the credit of your orator in said Number Two Account the maximum credit to which was limited to the sum of \$1,000, as hereinafter more fully stated. No person within the State of Louisiana has ever had power or authority to draw, or ever has drawn, against said Number One Account, but the balance to said account is, and always has been, subject solely to the draft of your orator's Treasurer drawn from your orator's said Home Office; for said Number One Account is, and always has been, used by your orator for the sole purpose of transmitting to your orator's said Home Office the moneys deposited to the credit thereof by your orator's said local Cashier; nor have the funds deposited to the credit of said Number One Account or any part thereof ever been used or invested within the State of Louisiana.

"It is, and always has been the duty and practice of said Cashier daily to report to your orator at its Home Office the amount that day deposited to the credit of said Number One Account, and on Thursday of each and every week your orator's Treasurer has always, at its Home Office in the City of New York, drawn upon said Number One Account, for the full balance there and then reported to be to its credit, by your orator's draft for said sum there and then mailed to said bank for said purpose payable in current funds in New York City. Said Number One Account and the moneys deposited to the credit thereof have never been used for any other purpose or in any other way than for the purpose of transmitting the same to your orator's Home Office in the manner aforesaid, and for that reason your orator is informed and believes, and upon information and belief states, that all moneys deposited to the credit of said account consist of money in transit which has its *situs* at the domicile of your orator in the City of New York, and is not subject to taxation within the State of Louisiana.

"That said Number Two Account is limited in amount to a maximum credit balance of \$1,000 and is subject to the check either of your orator, or of your orator's said local Cashier who is authorized to draw checks against the same solely for the purpose of liquidating the current expenses of said local office and of making other authorized disbursements in connection therewith. The balance to said Number Two Account represents both the cash and credit employed by your orator in its business in the City of New Orleans and in the territory tributary to your orator's said office within said city. On the first day of January, 1906, the balance to your orator's

credit in said Number One Account was the sum of \$999.14."

That the complainant has never had money in possession within the jurisdiction of said taxing authorities, except a sum trifling in amount in its cash drawer for the purposes of making change, and has never had any money on deposit within said State, except said deposits to the credit of said Number One and Number Two Accounts.

Tenth.—That the complainant has always paid its proportionate share of taxes within said State; that exclusive of taxes on real estate, the complainant paid within said State taxes, licenses and fees for the year 1905 amounting to \$11,634.20, and for the year 1906 amounting to \$11,168.75, and now is ready, willing and offers to pay all taxes it justly ought to pay.

PRAYER, that said tax in so far as it is based upon said item of Money Loaned on Interest, all Credits all Bills Receivable for Money Loaned or Advanced for Goods Sold, may be found to be illegal and void and be canceled, and that said tax in so far as the same is based upon said item of Money in Possession, on Deposit or in Hand in excess of said assessment of \$1,000 returned by complainant, shall be found and decreed to be illegal and void, and an attempt to deprive the complainant of its property without due process of law, and to deny to it the equal protection of the law, and that the defendants may be enjoined from attempting to collect said illegal portion of said tax or any part thereof, or from asserting any claim of right to collect same.

II.**The Answer.**

First.—The answer admits the jurisdictional averments, the corporate organization and business of the complainant, and the official capacity of the several defendants.

Second.—The answer denies “that no money has ever been loaned on interest, nor credits created nor bills receivable for money loaned or advanced for goods sold have ever been taken by complainant in or through said offices or ever kept or deposited there, but respondents aver the truth and fact to be that complainant had, at the time said assessment was made, and prior and subsequent thereto had money loaned at interest, credits, bills receivable for money loaned or advanced for goods sold, all growing out of business done within the City of New Orleans and the State of Louisiana, and assessable and taxable in said City and State in obedience to Section 7 of Act No. 170 of 1898.”

Third.—The answer denies knowledge of the truth or falsity of the allegation of the third paragraph of the complaint relating to the powers and authority of the complainant’s representative within the State, and demands strict proof in that behalf.

Fourth.—The answer admits the allegations of the fourth paragraph relating to the complainant’s authority to do business in the State, except it does not admit that the business therein de-

scribed is business done from and at complainant's Home Office.

Fifth.—The answer admits all the allegations of the fifth paragraph of the complaint relating to the complainant making return to the assessor, except the allegation that the return covered all of the complainant's property, and avers "the truth and fact to be that complainant had, at the time said assessment was made, in the Parish of Orleans and State of Louisiana, cash on deposit or in hand not only in excess of \$1,000, but, also, actually in excess of \$51,700, the amount of said assessment, and, too, your respondents aver the truth and fact to be that, at the time said assessment was made, complainant had, in the Parish of Orleans and State of Louisiana, money loaned on interest, credits, bills receivable for money loaned or advanced for goods sold of an amount and value far exceeding the sum of \$568,900."

Sixth.—The answer admits the allegation of the sixth paragraph of the complaint relating to the action of the Board of Assessors in placing said \$568,900 item on the assessment roll and raising said other item from \$1,000 to \$51,700, except that the defendants deny that said acts were done arbitrarily, and aver that they were done according to the true facts and the law.

Seventh.—The answer admits all the allegations of the seventh paragraph of the complaint relating to the appearance before the Board of Assessors, except the answer denies that the complainant made an alternative application for a reduction of the item relating to open accounts.

Eighth.—The answer admits the allegations of the eighth paragraph relating to complainant's appearance before the assessment committee of the City Council, except it denies that the complainant made an alternative application for reduction of the item of open accounts, and except also that it denies the complainant's statement as to the tax justly due, and avers that the amounts in controversy are the true amounts.

Ninth.—The answer denies all the allegations of the ninth paragraph of the complaint relating to loans made in Louisiana, except "such averments therein contained as cover methods of business followed by complainant which said allegations respondents can neither deny nor admit and are entitled to, and call for, the strictest proof thereof, and avers that the complainant did have in the aggregate in the two accounts aforesaid an amount far in excess of the sum for which it is assessed on said item of 'money in bank.' "

Tenth.—The answer admits the allegations of the tenth paragraph of the complaint relating to the taxes paid by complainant, but denies that if the taxes in controversy here were valid the complainant would pay more than its just share of taxes.

Eleventh.—The answer denies the allegations of the eleventh paragraph of the complaint, which in substance and effect is the common Confed-
eracy Clause, and avers that "complainant having failed, in its return and application to respondent, the Board of Assessors, to make an alternative request for a reduction of any of the items assessed to it, is estopped, by law, from

urging in this Court any right to such reduction, and all said assessments herein, if maintained at all, must be maintained in their entirety, all in accordance with Sections 25 and 26 of said Act 170 of 1898," and further denies generally all matters not therein sufficiently answered, confessed, traversed and avoided, or denied.

III.

The Replication.

The replication is in the usual form.

THE ISSUES.

From the pleadings the Court will observe the issues in the case are,—

First.—Did the complainant, at the time in question, have within the territorial jurisdiction of the defendants, and taxable therein, Money loaned on Interest, Credits and Bills Receivable for Money loaned or advanced for Goods Sold of the value of \$568,900, or of any other value; and

Second.—Did the complainant, at the time in question, have within the territorial jurisdiction of the defendants, and taxable therein, Money in Possession, on Deposit or in Hand of the amount or value of \$51,700 instead of \$1,000 as returned by the complainant.

THE FACTS IN THE CASE.

There is no conflict in the evidence, nor dispute about the facts in the case.

The pleadings and the evidence present two questions of fact,—*first*, Were the Company's policy loan, premium lien note and blue note contracts with its Louisiana policyholders, which were assessed and taxed as an item of "Money loaned on Interest, all Credits and all Bills Receivable for Money loaned or advanced for Goods sold," within the jurisdiction of the taxing authorities, or property subject to taxation; and, *second*, Was the money deposited to the credit of the Company's Number One Bank Account which the defendants undertook to assess and tax as "Money in Possession, on Deposit or in Hand," taxable property within their jurisdiction?

A correct understanding of the case and of its merits can best be gained by stating the facts bearing upon these two questions in the order above stated. If the facts in the case are well understood, the law applicable to them seems very plain. We therefore here present the facts fully, arranging them in the order above suggested and adhering faithfully to the language of the undisputed testimony of the several witnesses.

FIRST.—Were the Company's policy loan, premium lien note, and blue note contracts with its Louisiana policyholders, which were assessed and taxed as an item of Money loaned on Interest, all Credits and all Bills receivable for Money loaned or advanced for Goods sold, within the jurisdiction of the taxing authorities, or property subject to taxation.

As to Policy Loans.

I.

How policy loans are negotiated, made and the money paid.

Two witnesses testify on the subject of policy loans, the Secretary of the Company, who has supervision at the Home Office of the Company's Division of Policy Loans, and the Superintendent of said division.

The Secretary says (pp. 47, 48) the business of the Company involving money loaned on interest, credits or creating credits, bills receivable for money loaned or advanced for goods sold, making, altering or discharging contracts, and the investment of the Company's funds and every part thereof, is and always has been transacted at the Home Office of the Company in the City of New York, and not elsewhere.

The Company has for years maintained at its Home Office a division under the direction of the

Secretary, known as the Division of Policy Loans, of which George C. Newton is Superintendent; this division is employed exclusively in making and handling policy loans. Applications for loans to policy-holders of Louisiana are initiated by the policy-holder writing directly to the Home Office, or communicating with the Home Office through the office in his locality (pp. 55, 77) which has been established to facilitate the acquisition of new insurance and for the convenience of policy-holders in paying their premiums and through which local offices soliciting agents in the locality forward to the Home Office their applications, and which has been used as a convenience for communication between the Home Office of the Company and applicants for insurance, and between the Home Office and the Company's policy-holders (pp. 43, 44, 45).

But the so called branch office has never had power or authority to loan money on interest or otherwise, or to grant or create credits, or to take or accept bills receivable for money loaned or advanced for goods sold, nor has the New Orleans office ever done any of these things. The office is not clothed with authority to make, nor has it ever made, contracts of any kind; all business of the Company involving the making of contracts, the loaning of money or creating credits is transacted solely at the Home Office of the Company in the City of New York. The local office in New Orleans is a premium collection and forwarding office (pp. 44, 45, 46).

If a policy-holder desires to apply for a loan, he either writes a letter or signs the Company's application therefor and sends it through the mail directly to the Home Office or by way of the Company's office in the locality where he lives. At the

Home Office it is received in the Division of Policy Loans and filed there. It is never filed anywhere else (pp. 55, 77).

When such application is received at the Home Office in the Division of Policy Loans, the policy contract, the state of premium payments, the title to the policy and all other things necessary to determine whether or not the Company will make the loan, are there investigated, and if the Company concludes to accept the application it is accepted by the Division of Policy Loans at the Home Office and word to that effect sent to the policy-holder either directly by mail or through the Company's office in the locality. If the Company accepts the loan, the Loan Agreement is made up in duplicate in the Division of Policy Loans at the Home Office, and as so made up is transmitted to the policy-holder either directly through the mails or by way of the Company's office in the locality for signature, and when signed is returned to the Home Office with the policy in the same way that the application came usually (pp. 55, 77).

When the papers are received here, if the papers are found to be properly executed and accompanied by the policy as a pledge to secure the loan, the Division of Policy Loans draws a warrant on the Treasurer of the Company at the Home Office for the amount of the loan, and the Treasurer in response thereto sends to the Division of Policy Loans a check for the amount of the loan drawn on the Company's bank account in the City of New York, and payable in the City of New York. The Division of Policy Loans then sends the check by mail either directly to the borrower or to the borrower by way of the office in the locality (p. 55).

Mr. Newton, the Superintendent of the Division of Policy Loans, says (p. 77) the functions of the Division of Policy Loans in the Home Office "are to receive and consider applications for such loans, to accept or reject them, and if it accepts them to cause the loan contract to be properly executed and to accept delivery thereof, and receive the policy in pledge as security for the payment of the loan, and to pay the borrower the proceeds of the loan."

The Company's method of making policy loans and its procedure with respect thereto are practically the same now as they always have been. Some policies (pp. 78, 82) show on their face the amount of loan obtainable; as to others, this "cannot be ascertained except by consulting the Actuary's Department of the Company. If a policy is not clear on this subject, the Company requires the applicant to send to the Home Office a form prepared for that purpose applying for the loan and requesting the Company to "please state what amount of loan will be granted, if any" (p. 83). "If a policy-holder writes a letter to the Home Office asking the amount of loan available, the letter will be treated as a formal application for information and the information will be given in answer. Whether, however, the application is made on the above form or whether by letter, it comes to my Division in the Home Office. It is then the duty of my division in the Home Office to, and we do, examine the policy form and ascertain either from it, or from the policy form and the Actuary's Department in the Home Office, the amount of loan available at that time on the policy." In answer we send a letter on a prescribed form giving the amount of loan that will

be made and any special requirements in each case (See form at bottom of page 83). If, in response to this, "the policy-holder signifies his desire for the loan, we then in my Division make up the Policy Loan Agreement in duplicate ready for signature, transmit it to the policy-holder, accompanying the same with a letter on the Company's customary form for that purpose directing the policy-holders to sign the Loan Agreement and return it together with the policy (p. 84).

"When the policy-holder executes the Loan Agreement in duplicate, he then transmits the same together with his policy either directly or through the Branch Office to the Home Office where it comes into my Division; it is then our duty to, and we do, examine the papers to see if the Loan Agreement has been executed by all the persons who appear by the Company's records to have any interest in the policy. If it has not been properly executed, we return the Loan Agreement with instructions about proper execution, retaining the policy here until the properly executed papers are returned to us, and when all papers are finally completed to my satisfaction in our Division we then draw a warrant on the Treasurer at the Home Office, who draws and transmits to my Division a check for the amount of the loan, payable to the order of the borrower, the check being always drawn against the Company's balance in the bank in the City of New York, where they have always been paid. My Division forwards this check on the Company's bank account in New York City to the borrower. This completes the loan transaction and it is the way all loans have always been made to policy-holders in Louisiana" (pp. 84, 85).

"The whole matter of the loan, the amount to be loaned, the acceptance of the application, the approval of the papers, the receipt and acceptance thereof, and the payment of the money, is and always has been conducted at the Home Office, and never anywhere else, with the exception of loans that have been made at the company's office of Issue in Chicago and in certain cases in some branch offices of unusual importance, but never in any instance anywhere in the State of Louisiana has any loan been made. All the Louisiana policy loan business is and has been conducted at the Home Office in the way I have stated" (p. 84).

II.

The Form of the Policy Loan Agreement.

The following is a copy of the Company's Policy Loan Agreement form upon which policy loans are made (p. 79),—

"POLICY LOAN AGREEMENT.

"WHEREAS, the undersigned have this day duly received from the NEW-YORK LIFE INSURANCE COMPANY Dollars (\$.....), in cash, as a loan upon Policy No., issued by said Company on the life of..... Therefore,

"IN CONSIDERATION of the premises, the undersigned hereby agree as follows:

"1. To pay said Company interest on said loan at the rate of five per cent. per annum, payable in advance from this date to the next anniversary

of said policy, and annually in advance on said anniversary and thereafter.

"2. To pledge, and do hereby pledge, said policy as collateral security for the payment of said loan and interest, and herewith deposit said policy with said Company at its Home Office.

"3. To pay said Company said sum when due with interest, reserving, however, the right to reclaim said policy by repayment of said loan with interest at any time before due, said repayment to cancel this agreement without further action.

"4. That said loan shall become due and payable,—

"(a) Either if any premium on said policy or any interest on said loan is not paid on the date when due, in which event said pledge shall, without demand or notice of any kind, every demand and notice being hereby waived, be foreclosed by said Company by deducting the amount due on said loan from the reserve on said policy computed according to the American Experience Table of Mortality and interest at the rate of four and one-half per cent. per annum; and if after said deduction there is any balance of said reserve as so computed, said balance shall be taken as a single premium of life insurance at the published rates of said Company at the time said policy was issued, and shall be applied to purchase upon the life of the insured under said policy, at the age of said insured on said due date, paid-up insurance for such amount as said balance will buy, payable under the same conditions as the original policy, but without premium return, participation in profits, or further payment of premiums;

“(b) Or, (1) on the maturity of the policy as a death claim or an endowment; (2) on the surrender of the policy for a cash value; (3) on the completion of any Tontine or Accumulation dividend period. In any such event the amount due on said loan shall be deducted from the sum to be paid or allowed under said policy.

“5. *That the application for said loan was made to said Company at its Home Office in the City of New York, was accepted, the money paid by it, and this Agreement made and delivered there; that said principal and interest are payable at said Home Office, and that this contract is made under and pursuant to the laws of the State of New York, the place of said contract being said Home Office of said Company.*

“IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and affixed their seals this day of 190....

..... [L. S.]

..... [L. S.]

..... [L. S.]

Signed and sealed in presence of

.....
2808. Prior to 99-135.”

Special attention is invited to the fifth paragraph of the above form, which states, as a part of the agreement of the parties, that the loan was applied for, accepted, the money paid and the agreement delivered, at the Home Office in New York City, where the principal and interest are payable, and that the place of the contract is the

Home Office of the Company in the City of New York.

The Company uses two other loan contract forms, both of which are set out in the evidence at pages 80 and 81, but they differ from the above only in the terms of the fourth paragraph relating to the maturity of the loan, its foreclosure or payment. The three forms are adapted to meet the terms of all the Company's policies in respect of loans, the particular form to be used in each case to be determined by the persons in charge of the Company's Division of Policy Loans, and depending upon the terms of the specific policy upon the security of which the loan is to be made.

III.

The Pledged Policies and the Loan Contracts Always Kept at the Home Office Where the Principal and Interest Are Payable.

Superintendent Newton says that the policy loan contracts (p. 89) "are, and always have been, continuously kept" at the complainant's Home Office, in his department (p. 77) "before the Company created the Division of Policy Loan Securities, March 13, 1906, but since the last named date they have always been kept in that Division." No agent, employee or representative of the Company in the State of Louisiana has ever had the custody of the papers relating to a loan (p. 90).

Whenever the Division of Policy Loans concludes a loan, that division transmits to the Comp-

troller's Department in the Home Office a card showing to that department the amount of interest to be collected annually on account of the loan (p. 85).

The Secretary says (p. 55), notice of the amount of interest due is sent to the policyholder as a part of the notice of maturing premium. These notices are made up in the Comptroller's Department at the Home Office and are usually sent to the office in the locality for actual mailing to the policyholders. The annual interest is always payable at the Home Office, and the notice sent to the policyholder so states; but the notice usually also authorizes the policyholder to pay it with the premium at the office in his vicinity which is named in the premium notice. The policyholder pays the interest either by remitting directly to the Home Office or to the authorized local office.

From an inspection of the loan agreement form it will be observed that the loan does not become due on any specific date; it never becomes due unless the policyholder defaults in paying the premium or interest, or unless a benefit becomes payable under the policy. No renewal of the loan, therefore, is ever required.

IV.

How Policy Loans Are Collected and Paid, or Their Payment Enforced.

The Company has (p. 89) "never asked a policyholder to pay a loan as long as his policy continues in force and he pays his interest according to the terms of the loan agreement. It

never sent a policy loan agreement into the State of Louisiana for collection, and does not expect to do so. It never collected the amount of a loan, and does not contemplate doing so, on any policy made to any policy-holder in the State of Louisiana, by legal process either in the State of Louisiana or elsewhere. The Company never has made a loan unless it had in its own possession on account of the value of the policy acquired by the payment of premiums thereon in cash ample value as security for the loan."

In making loans on policies, the Company (pp. 56, 90) relies solely for the payment of such loans upon the reserve value of the policy which is pledged as security for the loan. The financial responsibility of the policy-holder is never an element that enters into the Company's consideration in making such loans, or in dealing with them.

If on a policy that was pledged with the Company for a loan a tontine benefit matures, or if such policy becomes a claim by death or as a matured endowment, then the Company, in settling the tontine benefit, death-claim or the endowment benefit, deducts the amount of the loan from the amount so payable (p. 89). All policy loan settlements of every kind are, and always have been, made by the Company at its Home Office. If the premium on the policy or the interest on the loan is not paid when due, the Company then forecloses the loan at its Home Office by deducting the amount of the loan from the reserve on the policy in the manner provided in the loan agreement or the policy contract (pp. 85 to 89 inc.).

If the amount due on the loan exhausts the reserve, the Actuary's Department mails the policy-holder from the Home Office a letter directing his attention to the transaction, advising him of

the default, and notifying him that "settlement of said indebtedness has been made in accordance with the terms of the policy, and the policy has no further value."

Or if on foreclosure the amount of the reserve exceeds the amount of the debt, the Secretary sends the policy-holder a similar letter notifying him of the foreclosure, and enclosing his policy endorsed for the paid-up or continued insurance which the excess of the reserve over the indebtedness would pay for (See pp. 86, 87 and 88 for these forms).

Or if after such foreclosure there was a balance in cash payable to the policy-holder, the papers are transmitted to the Department of Policy Claims in the Home Office, where a check will be drawn payable to the order of the legal owners of the policy for such balance, and said Department of Policy Claims transmits the check to the payees thereof, accompanying the same with a letter on the Company's customary form for that purpose (p. 88 and form commencing at bottom of page).

The specific form of letter to be used depends upon the form of the policy and the facts and circumstances in each case. If there are any special circumstances, this would be added in typewriting in that one of the customary forms used (p. 88).

In every case of foreclosure we always retain at the Home Office the original policy and the policy loan agreement, except where the policy has been endorsed for paid-up or continued insurance (p. 89).

If a borrower voluntarily pays the loan, "the payment is made at the Home Office of the Company. * * * If on receipt of the amount of the loan at the Home Office the sum remitted by

the borrower is found to be correct, we then return the policy through the mails to him and acknowledge payment of the loan, but we never return to him the loan agreement; that we retain as a part of our office file and mark it canceled. If the amount the policy-holder remits is less than the amount due on the loan, we credit him with the amount received, advising him of the balance due; and if the amount received is more than the amount due, we return the excess with the policy" (p. 90).

Thus the applications for policy loan contracts are received at the Home Office, there considered, acted upon, and accepted or rejected. If they are accepted, the money is paid by check drawn and delivered through the mails at the Home Office on the Company's bank account in the City of New York.

Not only by the very nature of the transaction is it a New York contract, but in order that there may be no doubt about it the parties themselves agree in the policy loan contract that the application is made, accepted, the money paid, and the agreement made and delivered at the Home Office of the Company, that the principal and interest are payable there, and that the contract is made under the Laws of New York, the place of the contract being the Home Office of the Company.

These contracts from the time they are received and accepted by the Company are always retained in the Home Office of the Company. In no instance has such a contract ever been sent to Louisiana. The interest is payable at the Home Office, but the policy-holder, when authorized to do so, at times pays it with the premium at the local office (p. 93), which reports the payment each day

to the Comptroller's department at the Home Office.

Payment of the loan is always made at the Home Office whether voluntarily paid by the policy-holder, or settled out of a benefit payable under the policy, or foreclosed. No agent, employee or representative of the Company within the State of Louisiana has ever had anything to do with these agreements, except to receive interest on them for transmission to the Home Office when the Company expressly authorized the policy-holder to pay the interest there with the premium on his policy, and except, also, the forwarding of papers to the policy-holder when sent to him by the Company for that purpose, or transmitting them to the Home Office when the policy-holder entrusted him with them for transmission, services of no more contractual importance than the forwarding functions of the United States post-office (pp. 45, 46, 47, 48, 77, 78, 84, 90, 92).

As to Premium Lien Notes.

I.

Premium Lien Notes, and how they are Negotiated and Made and the Note Transaction Completed.

A contract which the Company calls a premium lien note is sometimes taken in payment of a premium on a policy, and is a lien on the value of the policy.

Mr. Mahoney, for more than ten years Chief Clerk in the Note Division of the Comptroller's Department at the Home Office of the complainant, says that said Note Division exists for the purpose of passing upon applications for premium lien notes, accepting or rejecting them, making out such notes, causing them to be executed, and accepting delivery of them if executed as required, retaining custody thereof, calculating the interest thereon and obtaining payment thereof out of any benefit payable under the policy, and generally transacting all the business in respect to Notes or Bills Receivable in which the Company has any interest (p. 65).

The Company has never taken, owned or been interested in any Bills Receivable for Money loaned on Interest or advanced for Goods sold, or Bills Receivable taken for any purpose or Promissory Notes within the State of Louisiana, or in connection with its business in said State, except that it has at times taken and owned in connection with premium settlements on policies on the lives of residents of Louisiana, but never within the State, a form of contract which the Company calls a premium lien note (pp. 65, 66).

In describing the circumstances under which the Company accepts such notes and its practice in respect thereto, Mr. Mahoney says (p. 67), the Company "has never taken a premium lien note except from a policy-holder in settlement in whole or in part of a renewal premium, nor has it ever taken such note except in settlement in whole or in part of a renewal premium on a policy upon which enough premiums had theretofore been paid in cash to create a reserve on the policy equal to or greater than the amount of the premium lien

note. Under certain forms of policies where the policy had acquired by payment of premiums in cash a reserve equal to or greater than the note, the Company has sometimes accepted from a policy-holder a premium lien note in settlement in whole or in part of the premium when the policy holder could not or would not pay the premium in cash. The Company's method of negotiating, making and completing a premium lien note transaction has always been as follows:

"A policy holder who desired to settle a premium in whole or in part by giving a premium lien note, has always made application for that purpose to the complainant at its Home Office in the City of New York, either in person at the Home Office, or directly through the mails, or by way of the Company's local office. Such application, whenever it is received at the Home Office, has always been transmitted to the Note Division in the Comptroller's Department, where it is our duty to consider, and we always have considered, such applications, and either accepted or declined the same.

"In acting on such applications we have always considered the form of the policy-holder's policy contract, the number of premiums that have been paid in cash, and ascertained and considered the reserve value of the policy; and if, in view of all these things, we were satisfied that the Company could safely accept a premium lien note in settlement in whole or in part of the premium, and in all other respects the transaction was such that the Company deemed it desirable to accept the premium lien note, we then in my division filled in the Company's customary form for premium lien note with dates, amount, and other data in

the blanks left in the form for that purpose in such manner and form as would be satisfactory to the Company, and after so making out the form of contract we either delivered it to the applicant in person, or transmitted it to him directly through the mails, or by way of the Company's local Branch Office, with instructions as to the names to be signed to the note,—the Company's rule in such cases being to require the note to be signed by every person appearing by the Company's records to have an interest in the policy contract, and also with the further requirement that the makers remit to the Company interest thereon in advance according to the rate called for in the note to the next succeeding anniversary of the policy.

“After the policy-holder has received the form for the premium lien note and signed it, he then returns it to the Home Office either in person, or directly through the mails, or by way of the Company's local office, where it is again received in my division, there examined for the purpose of seeing if it was signed satisfactorily and if the interest in advance as required was also received; and if on examination all the Company's requirements were found to be fully complied with, and interest in advance sent in with the note, then we there accepted the note, endorsed on it the interest payment, and the premium was marked in the Comptroller's Department on the Home Office books as settled to the extent that the note covered the premium, the balance of the premium of course having been received in cash if the note was only for a part of the premium.

“If, however, on considering the application in the Note Division it was ascertained that the policy-holder's policy was one in respect to which

the Company did not care to accept a premium lien note, or the cash premiums had been insufficient to create the required reserve, or if the risk was believed to be impaired, or if for any other reason we concluded that it would not be advisable to accept a premium lien note, we there and then declined the application. These applications we have very frequently declined, and on certain forms of policies we do not accept them at all. * * * *

"If the note is accepted it is filed in the Note Division of the Comptroller's Department at the Home Office" (p. 68).

II.

The Terms of the Premium Lien Note.

The form of the premium lien note is as follows (Between pp. 66 and 67).—

"2311. July, 1904.

PREMIUM LIEN NOTE.

\$.....

.....190

".....after date I promise to pay to the order of the NEW YORK LIFE INSURANCE COMPANY, at the office of said Company in the City of New York, the sum of Dollars, with interest in advance at the rate of five per cent. per annum (for value received); being for premium due on Policy No.....issued by said Company on the life of

"It is understood and agreed:

"1. That this note may be renewed, if the interest thereon and subsequent premiums on said policy are duly paid.

"2. That if any premium on said policy, or interest on this note, is not paid when due, this note shall thereupon immediately become due, and payable, with interest, and shall, without notice of any kind, be paid by deducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due, the balance only of said sum, if any, to be available for the purchase of insurance under and pursuant to the non-forfeiture provision of said policy.

"3. That in the settlement of any claim or any benefit under said policy before this obligation shall have been fully paid the amount of this note shall be deducted from the amount otherwise payable by said Company.

"Signature of the person
whose life is insured.

"Signature of the person
or persons for whose
benefit the Insurance
is effected."

The Court will observe, from an inspection of this form, that the note is payable, principal and interest, "at the office of said Company in the City of New York"; that it is automatically renewable by pay-

ment of the interest thereon and subsequent premiums on the policy; that in the event of default in paying interest or premiums when due, the makers are not required to pay, but the Company is to settle the indebtedness "by deducting the amount due thereon from the sum which by the terms of said policy is applicable to the purchase of insurance in the event of non-payment of premium or interest when due"; and that the sum named in the note is always payable out of any claim or benefit under the policy.

Under no conditions, therefore, is it ever necessary for the Company to resort, nor has it ever resorted, to the Courts of Louisiana for the collection of the claim evidenced by this note, for it has in its own possession at its Home Office funds of the maker from which to pay the note, and holds the maker's written authorization to pay it out of these funds.

III.

Premium Lien Notes always kept at the Home Office and never elsewhere. They are treated as renewed when premium and interest payments are entered upon the Home Office records.

After the Note Division of the Comptroller's Department has accepted a Premium Lien Note, the note is retained in that department until it is paid (68). No person in Louisiana has ever had the custody of any such notes (p. 68).

The annual interest payable on these Premium Lien Notes is calculated in the Note Division of the Comptroller's Department (p. 65), and the amount payable is made a part of the premium notice to the policy-holder. The premium and interest are both payable at the Home Office, but the premium notice usually authorizes the policy-holder to pay both at a local office. The interest is received at the Home Office either by direct remittance from the policy-holder, or by remittance by him through the Company's office in the locality (pp. 69, 70).

No person in Louisiana has ever had authority to receive the interest except where the Comptroller's Department has expressly delegated authority to the cashier there to receive it by so advising the policy-holder in each particular case in the notice sent him before its due date, and in such cases the cashier has no authority except to receive and deposit the money. These are all the powers and authority the cashier or anyone else in Louisiana has ever had to act for the Company about these notes (pp. 69, 71, 72).

Although these notes on their face are due on a specified date, no renewal thereof is ever expressly made. "If the interest called for by the note is received and the premiums are paid on the policy, then we enter on the premium card the payment of the interest, hold the note and treat it as continued without any action as to its renewal" (p. 69).

IV.**How Premium Lien Notes are collected and paid, or their payment enforced.**

Not only are these notes always retained at the Home Office and treated as renewed if the premium on the policy and interest on the note are received at the Home Office, but the Company never has demanded payment of any of these notes. "It never accepts such a note unless it has in its own possession money held for the ultimate benefit of the policy-holder with which to pay it" (p. 69).

If the borrower voluntarily pays the amount of a premium lien note, the payment (p. 71) "is never accepted as payment until received in or reported to my division and the account there examined and the amount due determined. If the note is paid, the note is either returned to the maker of it, or canceled and retained in my division."

The interest on these notes is made payable on the same date as the due date of the premium. The notes, if not voluntarily paid by the maker by sending the money to the Home Office, are held continuously in the Note Division of the Comptroller's Department (p. 68) "until the policy has lapsed or become a claim by death or maturity, or until other benefit has become payable under the terms of the policy." In any such case the Company satisfies the notes out of the funds in its hands accumulated or payable on account of the policy. If, however, default is made in payment of interest on the note it has always been

the Company's practice to, and it does, thereupon satisfy the debt evidenced by the note at the Home Office of the Company by deducting the amount of it from the accumulated value of the policy (pp. 67, 68, 69).

After the premium lien note is satisfied in one or the other of the above ways, in certain of these cases the Company mails it to the maker or other person; in many cases it merely marks it on its own records as canceled and thereafter retains possession of it in the Note Division; in other cases it sends it to the branch office for return to the maker (p. 68).

The Company never has resorted to the courts of Louisiana or any other jurisdiction for the collection of any of these notes (p. 69). In accepting such notes it relies for their final payment solely upon the reserve value of the policy, which is in the Company's own possession and control at its Home Office in the City of New York (p. 69). The financial responsibility of the maker is never an element considered by the Company in determining whether or not it will accept such note (p. 69).

V.

No representative of the Company in Louisiana has ever made a Policy Loan or taken a Premium Lien Note, or been authorized to exercise any discretion in respect thereto, or been entrusted with the possession of the evidence of the debt or the security, or had any control whatever over the business. The domicile of the policy-holder is a matter of no consequence whatever in these transactions and has never figured therein.

From the facts as already stated this fully appears, because it is clearly shown that all this business is exclusively Home Office business where the loans are made, the securities kept, and the transactions handled and closed. The witnesses all say that no representative of the Company within the State has ever had authority to take, or has ever taken, a loan contract or a premium lien note (pp. 44, 70, 84, 92). "All business of the Company involving the making of contracts, loaning of money or creating of credits is transacted solely at the Home Office in New York" (46).

If any paper or document is entrusted to the local office for transmission to the Home Office or to the policy-holder, it is the duty of that office to forward the same just as it is its duty to forward applications for policies, or policies written on such applications (pp. 45, 46).

No person within the State has ever had or exercised any authority or performed any act in respect to either policy loan or premium lien note contracts, except in special instances where the Comptroller's Department has expressly delegated authority to the Cashier there to receive the interest on such indebtedness with the premium on the policy by advising the policy-holder in each case that the interest might be paid there, and even in such cases the New Orleans office has had no authority except to receive and deposit the money to the credit of the Company and subject solely to its draft from the Home Office (pp. 47, 48, 70, 71, 84, 93 and 95). The money, however, is never accepted as payment until received in, or reported to, the proper division in the Home Office and the account there examined and the amount due determined (pp. 65, 66, 71, 84, 90).

The Secretary says, "No person representing the Company in Louisiana has ever had anything to do with the making of loans except to transmit such papers as the Company sent them, or the policy-holder gave them, for that purpose, or to receive and transmit such interest payment as the policy-holder gave them for that purpose, and like services, but nothing in any way involving the exercise of judgment or discretion or the making of a contract" (p. 56).

It has already been shown that the papers and securities in all these transactions are continuously kept at the Home Office and never at the Company's Louisiana office, and that no person there has ever had control over them or over the business. The whole transaction in each case, from its inception to its conclusion, is made, handled and finally closed at the Home Office in New York City, where all papers are always kept.

Hence, they cannot in any sense be considered Louisiana transactions. They are New York transactions both on account of the way they are negotiated, made, handled and closed, and also by the express agreement of the parties to them. Therefore, the Secretary of the Company was perfectly accurate in his testimony when he said that the loans were made because premiums enough had been paid in cash to create a reserve on the policy as security for the loan, and because the policy-holder applied for the loan, and the proper division at the Home Office, after an investigation, concluded to, and did, accept the application. "In such case the Company makes the loan on the policy regardless of where the policy was written. * * * If all the Company's policy-holders moved into Louisiana their policies would be as good security for loans, and they would be as much entitled to loans, as if they had always lived in Louisiana; or, if every policy-holder in Louisiana moved out of the State, their policies would be just as good security for loans, and they would be equally entitled to loans, and the Company would make loans to them" (p 56).

As to Blue Notes.

I.

Blue Notes not taxable property because they do not evidence a debt.

The Secretary in his testimony (p. 59) refers to an agreement sometimes made with policy holders called a "Blue Note Agreement," of which the Company held for the New Orleans of-

face in 1906 an average on their face of about \$10,000.

This blue note contract, although called a note, is not a legal obligation for the payment of money. It is merely a device for extending the policyholder's time to pay his premium, the extension being made in writing by this blue note contract in order that there may be no misunderstanding on the subject.

The blue note contract form is as follows (Between pp. 74 and 75),—

“Pol. No. 190

“ON OR BEFORE....., after date,
without grace, and without demand or notice, I
promise to pay to the order of the NEW YORK LIFE
INSURANCE COMPANY,.....Dollars at.....

(Bank)

..... value received, with interest at
(Name of City)

the rate of five per cent. per annum.

“This note is accepted by said Company at the re-
quest of the maker, together with.....Dollars
in cash, on the following express agreement:

“THAT although no part of the premium due on
the.....day of.....190..., under
Policy No....., issued by said Company on the
life of
has been paid, the insurance thereunder shall be
continued in force until midnight of the due date
of said note; THAT if this note is paid on or before
the date it becomes due, such payment, together
with said cash, will then be accepted by said Com-
pany as payment of said premium, and all rights

under said policy shall thereupon be the same as if said premium had been paid when due; THAT if this note is not paid on or before the day it becomes due, it shall thereupon automatically cease to be a claim against the maker, and said Company shall retain said cash as part compensation for the rights and privileges hereby granted, and all rights under said policy shall be the same as if said cash had not been paid nor this agreement made; THAT said Company has duly given every notice required by its rules or by the laws of any State in respect to said premium, and in further compensation for the rights and privileges hereby granted the maker hereof has agreed to waive, and does hereby waive, every other notice in respect to said premium or this note, it being well understood by said maker that said Company would not have accepted this agreement if any notice of any kind were required as a condition to the full enforcement of all its terms.

“(Name) (Name)

“\$. (Address) (Address)

“1771. Jan., 1905.”

From an inspection of this form the court will observe the maker promises to pay the premium within a specified time, but it is expressly agreed therein “That if this note is not paid on or before the day it becomes due, it shall thereupon automatically cease to be a claim against the maker.”

The sum named in this note therefore never becomes collectible as a legal right. The note agreement is merely what on its face it purports to be, —evidence that the premium has not been paid,

and that the insured has an extended time within which to pay it. The Company's legal right to recover the sum named in the note is no greater on account of the note than would be its legal right in any other case of unpaid premium. Hence these notes are not taxable property unless unpaid premiums generally are taxable property, a thing which nobody has ever claimed.

SECOND.—AS TO "MONEY IN POSSESSION, ON DEPOSIT, OR IN HAND."

I.

The money in possession, on deposit or in hand for use in the Company's Louisiana business was in fact less January 1, 1906, than the amount the Company returned to the Assessor under this item.

The Company never at any time during the year 1906 had any money in possession, or in hand in the City of New Orleans "except a small amount of cash in the cash drawer in the office of the cashier for the convenience of that office in making change, which cash in the cash drawer was never an item of any importance, and probably never exceeding \$200 or \$300" (p. 96).

In the bank, the Company kept an account known as "New York Life Insurance Company Account Number Two" (p. 95), "which could be checked against by the Cashier of the New-Or-

leans Branch Office for the purpose of paying the current expenses of the office" (p. 96).

The balance to this account was "limited to a maximum of \$1,000, * * * and, as a rule, is kept considerably below the limit of the account. This Number Two Account represents all the cash and all the credit employed by the complainant in its business in the City of New Orleans and in the territory tributary thereto" (p. 96).

On the 1st of January, 1906, the balance to the credit of this account was \$169.24 (p. 98).

Another bank account known as the "New York Life Insurance Company Collection Account" used for the purpose of making through the New Orleans bank collections or drafts or other money obligations had a credit balance January 1, 1906, of \$253.80 (p. 98).

Thus the money in possession, on deposit, or in hand for use in the Company's business in Louisiana January 1, 1906, did not exceed the sum of \$723.04, whereas the Company returned to the assessor money in possession on deposit or in hand of the amount and value of \$1,000.

II.

Deposits to the credit of the Number One bank account were not capital employed in the Company's business within the State, but were solely for transmission through the bank to New York and were not subject to be drawn against or to be used in Louisiana; therefore such deposits were not taxable in Louisiana.

In addition to the accounts in bank already referred to, the Company kept a bank account in New Orleans known as the "New York Life Insurance Company Number One Account." To the credit of this account was deposited daily all moneys received at the New Orleans Branch Office not deposited to the Number Two Account or kept for convenience of change in the cashier's office (p. 95).

The Company's Assistant Treasurer says (p. 95),—"The moneys deposited in the Number One Account were deposited there daily for transmission to the Home Office of the Company in the City of New York, and were never subject to the check, or to be drawn upon by any person, except by the Treasurer of the Company or myself together with other Home Office Officers of the Company, the draft or check always to be drawn from the Home Office by two of the above named officers.

"No one in Louisiana ever drew, or could draw, or had authority to draw, money out of this Number One Account.

"Each day when the local cashier of New Orleans Branch Office deposited money in this Number One Account, he obtained from the bank a duplicate deposit slip which he at once mailed to the Comptroller of the Company at its Home Office in the City of New York, who, from the data contained in such deposit slip, kept a daily balance as standing to the credit of the Company in its Number One Account in said bank in New Orleans, and on Thursday of each week the Comptroller in the Home Office reported to the Treasurer's Department in the Home Office the amount of money accumulated to said account during the current week, and thereupon the Treasurer, or myself, or other officers in the Home Office, on Thursday of each week, drew a draft on said Number One Account on the Whitney National Bank of New Orleans, or the Whitney Central National Bank Account, for the entire amount to the account as thus ascertained."

The average balance to the credit of this account on Thursday of each week during the months of January, February, March and April, 1906, and before the balances were drawn out as stated, was \$13,393.03 (pp. 96, 97, 98), which is representative of the maximum balances to the Company's credit in this account. On the 1st of January, 1906, however, the credit balance to this account was \$24,534.87 (p. 98), due to unusual conditions obtaining at that time (p. 100).

This Number One Account, therefore, did not represent capital employed by the complainant in its business within the State. It did not represent money or a debt over which any person within the State representing the Company had any authority or control. As soon as the deposit was made to the account, then the authority or control

over it, or right or power by any person to use it in the Company's business within the State, at once ceased. Like every other deposit in bank it created the relation of debtor and creditor, the debtor residing in New Orleans and the creditor, to whom alone payment could be made, residing in New York State where alone persons competent to collect the debt resided and where by their weekly draft they exercised this authority.

The action, therefore, of the Board of Assessors in raising this item of Money in Possession on Deposit or in Hand from \$1,000, as returned by the Company, to \$51,700, was unauthorized, unwarranted and arbitrary, and was not based upon any facts.

**From these facts the Court will
Notice,—**

First.—That the complainant in 1906 paid within the State valid taxes, licenses and fees aggregating \$11,116.75, which it does not object to.

Second.—That as to the assessment of \$569,900 on account of Money Loaned on Interest, all Credits and all Bills Receivable for Money loaned or advanced for Goods sold, the defendants were without jurisdiction to impose any tax whatever, for,—

1. The complainant had no property of this description within the territorial jurisdiction of the defendants.

2. The policy loan and premium lien note contracts were each and all negotiated, made, the money paid and the securities delivered at the

Home Office of the Company in the City of New York, where they were continuously kept and where they were payable when due.

3. Both by the circumstances under which they were made and by the terms of the policy loan agreements themselves they were New York contracts, made in New York, the place of the contract being the Home Office of the Company. The premium lien notes were accepted, the sums they called for credited, the note agreements made and delivered at the Home Office of the Company and never elsewhere; so that they too were New York transactions.

4. All these credits and choses in action were by their terms payable at the Home Office of the Company in the City of New York. If payment ever was received elsewhere, it never was credited as payment until actually received at the Home Office in the City of New York, and not then until in the Home Office the amount due was ascertained and the payment accepted as payment if found to be the true amount.

5. No representative of the Company within the State of Louisiana has ever been clothed with power or authority to make or ever has made any loans for the Company, or to exercise any discretion in respect thereto, or has been entrusted with the possession of the securities or the evidence of the debt, or had any control whatever over the business.

6. Neither the financial responsibility of the policyholder, nor his domicile, has ever had anything whatever to do with these transactions, nor has ever figured therein, the Company in making and handling them always relying solely for their

repayment on the reserve value of the policies, which is in the Company's possession and control at its Home Office.

7. The property in question not only never was within the State of Louisiana, but is not and never has been under the protection of the laws of said State, nor can it derive any benefit from the laws thereof; it is and always has been under the protection of the laws of the State of New York, where in the event of default the securities are foreclosed by satisfying the debt out of funds of the policyholders in the Company's hands there, as agreed in the contract.

8. The blue note contracts are not taxable because they are not obligations to pay at all. They are a mere device for extending the time to pay the premium, and they automatically cease to be a claim if the amount named therein is not paid on or before the date when due.

Third.—That these policy loan and premium lien note contracts are not ordinary commercial transactions resulting in the common relation of debtor and creditor. In their true sense they constitute a mere return to the policyholder of a part of the money he paid the Company, either for his unrestricted use or to pay further premiums on his policy. In either case they are anticipated policy settlements, based upon the accumulated value of the policy, which permanently reduce its value *pro tanto* unless the policyholder voluntarily chooses to repay them.

Fourth.—As to the item of Money in Possession, on Deposit or in Hand, the defendants were

without jurisdiction to tax the complainant on a valuation of \$51,700, for,—

1. The complainant's tax return of \$1,000, which included the balance to the credit of the Number Two Bank Account, as well as all money in possession or in hand, represented all the cash and all the credit employed by the complainant in its business in the City of New Orleans and in the territory tributary thereto.

2. The Number One Bank Account was not capital employed in the Company's business within the State but was used solely for transmitting money to New York by draft drawn weekly in New York for the entire balance to the credit of the account.

The Appellee Claims,—

First.—That the \$11,116.75 it paid in 1906 in taxes, licenses and fees was based primarily upon and mainly determined by the amount of business done within the State, and represented the full measure of its just or legal contribution to the public revenues, and for years after the present taxing law was passed and down to the year 1906 the State so treated similar annual payments.

Second.—That this is a property tax, not a franchise, business, or license tax.

Third.—That property not within the territorial jurisdiction of the State is not subject to taxation therein.

Fourth.—That the property sought to be taxed here was not within the territorial jurisdiction

of the State and, therefore, was not and could not by legislation or by any act of the appellants be made taxable there. Hence the tax complained of deprives the appellee of its property without due process of law and denies it the equal protection of the law.

Fifth.—That the policy loans and premium lien notes are neither loans nor credits in the true and ordinary sense, nor are they a personal liability of the policyholder; they are an anticipated policy settlement with the policyholder, based upon the accumulated value of the policy, and in no sense are they property taxable to the Company.

BRIEF OF THE ARGUMENT.

I.

The \$11,116.75 the Company paid in 1906 in taxes, licenses and fees, was based primarily upon and mainly determined by the amount of business done within the State, and represented the full measure of the Company's just or legal contribution to the public revenues, and for years after the present taxing law was passed and down to the year 1906 the State so treated similar annual payments.

\$10,500 of this annual tax which the Company paid in 1906 is called "license tax for the State and for the City of New Orleans"; but the taxing law requires the Company to "render to the Secretary of State a report signed and sworn to by its President and Secretary, of its condition upon the preceding 31st day of December, which shall include a detailed statement of its assets and liabilities on that day; the amount and character of business transacted in this State, moneys received and expended during the year, and such other information and in such form as he may require."

Cons. & Rev. Laws of La., Vol. 2, p. 1685, Sec. 7.

The next section after the one just quoted from provides for collecting the license tax, and requires

that “*said license tax shall be based on the gross annual amount of premiums on all risks located within the State, and upon risks located in other States or foreign countries upon which no license has been paid therein, as follows, to wit,—*

“First class.—When said premiums are \$700,000 or more, the license shall be \$5,250.”

The amount of this license tax imposed upon insurance companies as compared with the corresponding license tax imposed upon other interests and business, shows that the tax was intended to represent the full measure of the Company's just or legal contribution to the public revenues.

Interests and business generally in Louisiana pay a license tax, the amount of which in many instances is determined by the gross receipts of the business. A life insurance company collecting \$700,000 in premiums must pay a license tax of \$5,250 to the State, and a like amount to the city. A life company collecting premiums amounting to \$690,000 and less than \$700,000, must pay a license tax of \$5,175, and so on.

Now, a manufacturing corporation with gross receipts of \$750,000, is only charged a license tax of \$525, and with gross receipts of \$500,000 and under \$750,00, a license tax of \$350.

Const. and Rev. Laws of La., Vol. 2, p. 1676.

A bank with a capital and surplus of \$600,000 or more, and under \$800,000, is charged a license of \$600.

Const. and Rev. Laws of La., Vol. 2, p. 1677.

A wholesale merchant whose gross collections are \$600,000 or more, and under \$800,000, pays a license of \$200.

Const. and Rev. Laws of La., Vol. 2, p. 1682.

A retail merchant, whose gross collections are \$700,000 or more, and under \$750,000, pays a license of \$700.

Const. and Rev. Laws of La., Vol. 2, p. 1683.

The excessive license tax, therefore, charged against life insurance interests and business, as compared with other forms of business, shows that the Legislature took into account the fact that the transaction of the business of such corporations did not require them to have large amounts of other taxable property within the State, and so the license tax imposed on them was made much larger than the license tax imposed upon other interests or business to the end that in this way these forms of business might, through this disproportionate license tax pay "to the State a corresponding tax with that exacted of its own citizens."

For years the State recognized and treated the taxes, licenses, and fees imposed annually upon life insurance companies by express provision of law as representing the full measure of their just or legal contribution to the public revenues. The present taxing law was passed in 1898. Each year the Company made return to the Assessor of its balance in bank to the credit of its Number Two Account, which represented the cash em-

ployed in the Company's business within the State, and also returned for taxation the fair value of its tangible property within the State. On these, and these alone, it was taxed, and the tax was satisfactory to the State,—although it always had policy loan and premium lien note contracts with its policyholders within the state aggregating a large sum just as it had in 1906, and this the State well knew (p. 49).

All this time the Company's dealings with its policyholders within the State were the same as they were at the time the tax in question was levied and assessed. No objection, however, ever was made to the Company's tax return or to the taxes paid by it, but the same were received, and rightly received, as the Company's just contribution to the public revenues.

This tax, therefore, of \$11,116.75 which the Company paid for the year 1906 and which it makes no objection to, is all that it ought to pay; for it is equal to, or greater than, the tax exacted from other business interests whether domiciled within or without the State.

II.

This is a Property Tax, not a Franchise, Business, or License Tax.

The statute under which the tax is imposed is entitled "An Act to provide an Annual Revenue for the State of Louisiana by the Levying of An-

nual Taxes upon all Property not exempt from Taxation," etc.

Const. and Rev. Laws of La., Vol. II, p. 1541.

The body of the act levies an annual tax on "The assessed valuation of all property situated within the State."

Const. and Rev. Laws of La., Vol. II, p. 1541.

The assessor's return purports to be an assessment and valuation of personal property. It describes the several items of property in question as "Money loaned on Interest, all Credits and all Bills Receivable for Money loaned or advanced for Goods sold," and as "Money in Possession on Deposit or in Hand."

The courts have expressly held that the tax is a property tax.

Liverpool, etc., Co. v. Board of Assessors, 51 La., Ann., 1028, involved the validity of a tax levied and assessed upon the same items of property that are in controversy here. Referring to the nature of the tax, the court said,—“The taxes concerned in these cases are not taxes on business; they are taxes on property.” The case, therefore, relating as it did to a tax upon property, involved the question as to “whether the State possessed jurisdictional power to tax such mere debts due to foreign creditors.” The court further said in that case,—“The whole theory of taxation under the Constitution of 1879, which governs in this case, was based on the idea that the taxes were a property tax and that the property assessed should be

seized and sold to satisfy the taxes for which it was assessed."

See also,

Bailey v. Board of Assessors, 44 La. Ann., 766.

This tax, therefore, being a property tax, must be sustained, if sustained at all, as a property tax, and its validity must be determined by the rules of law relating to the validity of a tax upon property.

III.

Property not within the Territorial jurisdiction of the State is not subject to taxation therein.

This proposition of law is as old as the historic case of *McCullough v. Maryland*, where MR. CHIEF JUSTICE MARSHALL said,—“All subjects over which the sovereign power of the State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation.”

McCullough v. Maryland, 4 Wheat 316.

And it is used as the basis of one of the latest decisions of the Court on this subject, where the case involved a single question, namely, “Was

there any property within the jurisdiction of the State of Indiana so as to permit that State to tax it, simply because of the presence of the Ohio notes in that State?"

Buck v. Beach 206 U. S. 392.

Jurisdiction is just as necessary for valid taxation as it is for valid judicial action.

St. Louis v. Wiggins Ferry Co., 11 Wall, 423.

The Legislature cannot for purposes of taxation acquire jurisdiction over persons or property not within the limits of the State any more than the Legislature can confer upon the courts power to acquire jurisdiction in such cases. If property is not found within the State, it cannot be taxed within the State any more than property not found within the State can be subjected to judicial process therein.

"If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition."—MR. CHIEF JUSTICE FULLER in

Adams Express Co. v. Ohio State Auditor, 165 U. S., 194.

The courts of Louisiana have stated and applied this rule.

Liverpool, etc., Ins. Co. v. Board of Assessors, 51 La. Ann., 1028.

and the Federal and State courts generally, without exception, have recognized and enforced it.

State Tax on Foreign-held Bonds, 15 Wall., 300.

Tappan v. Bank, 19 Wall., 490.

Louisville, etc., Ferry Co. v. Kentucky, 188 U. S., 385.

Corry v. Baltimore, 196 U. S., 466.

Union Refrigerator Co. v. Kentucky, 199 U. S., 194.

Metropolitan L. I. Co. v. New Orleans, 205 U. S., 395.

Buck v. Beach, 206 U. S., 392.

Augusta v. Kimball, 91 Me., 605.

Grundy County v. Tenn., etc., Co., 94 Tenn., 295.

Bacon v. Tax Assessors, 126 Mich., 22.

If, therefore, the property in question here was not within the territorial jurisdiction of the State, this tax cannot be sustained.

IV.

The property sought to be taxed here was not within the Territorial Jurisdiction of the State, and was not and could not by legislation, or by any act of the defendants, be made taxable there. Hence, the tax complained of deprives the complainant of its property without due process of law and denies to it the equal protection of the law.

First.—The property sought to be taxed was not within the territorial jurisdiction of the State.

This property never touched the State at any time during the whole course of its existence. Whenever a policy-holder desired to borrow money on his policy or to settle premiums by a premium lien note, he made application for this purpose at the Home Office in New York City. His application was there considered, and accepted or declined. If accepted, the papers were made out at the Home Office and forwarded by mail for the policy-holder's signature. When he again returned them to the Home Office, they were there examined, and if found to be satisfactorily executed they were there accepted, and the money paid by drawing a check on the Company's bank account in New York City and delivering it to the borrower, or by crediting the premium payment.

Ever afterward the evidence of the transaction remained in the Home Office and never came into Louisiana. If the borrower paid the interest, the payment was credited to him in the proper de-

partment in the Home Office. In the event of default, no suit was ever brought for collection; no suit was ever necessary or intended to be brought. The loan was not made unless the Company had in its own hands at its Home Office money enough accumulated on account of premiums paid in cash on the policy out of which to pay the claim in the event of default. And so in every case the sum named in the loan agreement or lien note has been and always will be satisfied, in the event of default in the payment of premium or interest, by charging it up to the reserve on the policy at the Home Office as provided in the loan and note contracts, and not by resorting to the Courts of Louisiana.

Thus, these contracts were solely New York transactions, protected by the laws of New York, deriving from them their validity and enforced under them at the Home Office of the Company and not elsewhere.

The fact that the complainant had an office and representatives with limited powers within the State of Louisiana must not be allowed to confuse this issue. The office there existed for a specific purpose. The persons in charge of it and the representatives of the Company within the State were employed for specific and limited purposes. The office was a special office and the representatives were special agents. The sole functions of the office related to the acquisition of new insurance and receiving in cash such premiums upon existing policies as the Company in each case expressly authorized that office to receive. The general duties of the representatives of the Company within the State were confined solely to the acquisition of new insurance.

Neither the New Orleans Office, nor any representative of the Company within the State, has ever had power or authority to accept risks of any kind, to make, alter or discharge contracts, to extend the time of paying any premium, or to accept promissory notes or anything but cash in payment of any premium, "or to loan money on interest or otherwise, or to grant or create credits, or accept bills receivable for money loaned or advanced for goods sold, nor has the New Orleans Office ever done any of these things. The office is not clothed with authority to make, nor has it ever made, contracts of any kind. All business of the Company involving the making of contracts, loaning of money and creating of credits, is transacted solely at the Home Office of the Company in New York City" (p. 46).

A corporation may do a part of its business within the State just as an individual may. In respect of some of its business it may deal with citizens of a State on their ground, and in respect of other of its business it may deal with them on its own ground. Because it happens to have an office and representatives in the State for some purposes, it does not follow that it has them there for all purposes; it may have them there for some purposes, and still deny to them authority to transact other parts of its business with persons residing there and require that those dealing with it in respect to such business shall deal with it at its Home Office.

This was true in respect of the dealings of this Company. For the purposes of the acquisition of new insurance, it had offices and representatives within the State; but for the purpose of policy loans and premium lien notes, it required

the citizens of the State to deal with it at its Home Office. As to these, its dealings with its Louisiana policy-holders would have been precisely the same as if the Company had had no office or representative within the State for any purpose.

In Texas, for example, the Company ever since July, 1907, has had no offices or representatives for any purpose; and yet, every day it is making policy loan and premium lien note contracts with its Texas insured, precisely as it has hitherto done with its Louisiana insured. These contracts are made at the Home Office in respect to the Texas policy-holders just as they have been made in respect to the Louisiana policy-holders. Without having a single representative of any kind or in any capacity within the state of Texas, the company at its Home Office in 1908 made policy loans to its Texas insured aggregating \$639,465.42, and in 1909, aggregating \$303,064.43, precisely as it made the policy loan and premium lien note contracts with its Louisiana insured that are the basis of this tax, and it will handle, collect and foreclose them precisely the same.

Indeed there is no reason why any part of the contracts in question should ever be within the State of Louisiana or have a *situs* there for any purpose, for it is important to observe that these policy loan and premium lien note transactions are not ordinary investments of money; they are not ordinary loan transactions where a borrower obtains a loan on the faith of his individual credit supplemented by the value of the security he offers. Speaking accurately, these are neither "loans" nor "credits" in the ordinary sense in which these words are used; they are what the policies themselves designate them,—“advances” to the policy-holder of the accumulated value of his policy.

In making these contracts the Company does not consider the financial responsibility of the policy-holder, nor the probability of personal repayment. In truth, the Company neither cares for the borrower's financial responsibility nor for the probability of repayment by him. Its sole security is the contract and the accumulated reserve on the policy in the treasury of the Company in New York. It never asks repayment. It makes the contract because the policy-holder has paid in cash premiums enough so that the Company has in its own hands at its own office in New York money enough belonging to the policy-holder to repay itself in case of default; also, by the loan agreement the Company is authorized to deduct the amount of the loan from any benefit payable under the policy. On this money in its own hands at its Home Office the Company solely relies for its repayment. By the transaction, it has advanced to the policy-holder the value of his policy and will charge that value against the policy unless the policy-holder voluntarily elects to repay it in cash.

The transaction, therefore, accurately speaking, is, as the policy designates it, a mere "advance" to the policy-holder of the present value of his policy or a part thereof, and its repayment is secured by the property in the Company's hands which, at the proper time, it applies to satisfy the claim unless it is otherwise voluntarily paid.

These policy loan and premium lien note transactions, therefore, never touch, never have touched, and never will touch, the State of Louisiana. There is no reason why they should. They are Home Office transactions from their inception to their conclusion and in no way have they, nor can they have, a *situs* in Louisiana for any purpose.

Second.—These contracts cannot by legislation or by any act of the appellants be made taxable in Louisiana.

1. The general rule is, that credits and choses in action have their *situs* for taxation and for every other purpose at the domicile of the owner. This rule is called a fiction of the law, but it is a fiction arising from the necessities of the case and because such property is intangible and as a rule the only practicable *situs* for it is the owner's domicile; for the owner alone is familiar with it, knows its amount and value, and can handle or control it. Therefore it is a fiction which for all practical purposes is a fact, and is and must be treated as a fact until and unless the property actually acquires a *situs* away from the domicile of the owner where it is kept, used, managed, and has an actual location in the possession and control of some person who represents the owner.

State Tax on Foreign-held Bonds, 15 Wall., 300, decided in 1873, is the leading case on this subject. The principle upon which it was decided is unshaken by any of the numerous later decisions on this or kindred questions.

Buck v. Beach, 206 U. S., 392.

The State Tax case involved the validity of an act of Pennsylvania imposing a tax on bonds secured by a mortgage on a railroad within the State, but owned by non-residents of the State. The Court held the tax invalid. Mr. CHIEF JUSTICE FIELD, who delivered the opinion of the Court, said,—

"It is undoubtedly true that the actual *situs* of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of and are treated as property, in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages and debts generally, has no *situs* independent of the domicile of the owner, and certainly can have none where the instruments as in the present case constituting the evidence of the debt, are not separated from the possession of the owners."

See also,

Bristol v. Washington County, 177
U. S., 133.

Meyer v. Pleasant, 41 La. Ann., 645.
Liverpool, etc., Co. v. Board of Assessors, 51 La. Ann., 760.

Grundy County v. Tennessee Ry. Co.,
94 Tenn., 295.

Worthington v. Sebastian, 25 O. S., 1.
Barber v. Farr, 54 Iowa, 57.

The rule then that credits and choses in action can only be taxed at the domicile of the owner must obtain in this case, unless there is something peculiar about the transaction to take it out of this rule.

2. Within certain limitations the State may, by legislation, fix the *situs* of credits and choses in

action for taxation; but the State cannot, by legislation or otherwise, give credits or choses in action owned by non-residents a *situs* for taxation within the State, if such credits and choses in action are not and never have been within the State.

For instance, where a law which creates a corporation separates the *situs* of its stock for purposes of taxation from the domicile of its owner and fixes it at the place of the corporation, the purchaser of the stock takes it with the understanding that it should be taxed at the place of the corporation and the tax levied there is valid.

Tappan v. Bank, 19 Wall., 490.

Or where a non-resident accepts a mortgage on land in a State where the laws provide at the time the mortgage is made for assessing the mortgaged debt to the mortgagee as real estate and authorize the mortgagor to pay the tax and deduct it from the debt, such laws contravene no provision of the Constitution of the United States.

Savings & Loan Soc. v. Multnomah County, 169 U. S., 421.

But the State cannot by legislation bring property into the State for taxation that the owner does not bring into it. It cannot give property a *situs* within the State for taxation if the property is not actually within the State. Even although the State creates a corporation, it cannot by law render its property liable to taxation within the State where the property is permanently located out of the State.

Kentucky tried to do this. The Union Refrigerator Transfer Company was organized under the laws of Kentucky which provided that, "All real and personal estate * * * of all corporations organized under the laws of this State whether the property be in or out of this State * * * shall be subject to taxation." The corporation owned railroad cars which were permanently located and engaged in transportation outside of the State. The State, acting under the authority of the above laws, undertook to tax these cars; but the Court held the tax to be invalid as denying to the corporation due process of law.

Union Refrigerator Co. v. Kentucky,
199 U. S., 194.

The State of Kentucky could not for taxing purposes add to the value of a bridge franchise granted by it the value of another franchise for a part of the same bridge granted by the State of Indiana, although the two franchises were used together and each were necessary for the operation of the property. The value arising out of the Indiana franchise had its *situs* out of the State, and Kentucky could not give it a *situs* within the State for taxation.

Louisville, etc., Ferry Co. v. Kentucky, 188 U. S., 385.

The State of Pennsylvania, in taxing the capital stock of a railroad company, was bound to deduct from the value thereof coal owned by the company and located outside of the State.

Delaware, etc., Ry. Co. v. Pennsylvania, 198 U. S., 341.

The relation between a mutual life insurance company and its policyholders is that of debtor and creditor.

Uhman v. New York Life, 109 N. Y., 421.

People ex rel. Venner v. New York Life, 111 App. Div., 183.

Cohen v. Mutual Life, 50 N. Y., 610.

People v. Security Life, 78 N. Y., 114.

Suppose the State of New York were to assume to levy taxes against the several Louisiana policyholders of this Company based on the accumulated value of their policies, would it be pretended that such a tax could be sustained? If not, then how can a tax be sustained imposed by Louisiana on credits and choses in action payable by policyholders there at the domicile of the Company in the City of New York, which were made, kept, and which are, or will be, handled and collected at the domicile of the Company in the City of New York? Adapting to this situation the language of the Court in *Louisville, etc. Ferry Co. v. Kentucky*, 188 U. S., 385,—“There is in our judgment no escape from the conclusion that Louisiana thus asserts its authority to tax a property right, an incorporeal hereditament, which has its *situs* in New York.”

While, therefore, the State may, within certain limitations, fix the *situs* of credits and choses in action for taxation, in order to do so it must be so related thereto as to have actual jurisdiction over them; and if they are not actually within the State, the State is as powerless, by any act of its own, to acquire jurisdiction over them as is a

court to acquire jurisdiction for purposes of litigation over persons or property not found within its jurisdiction.

State Board of Assessors v. Comptoir Nat., 191 U. S., 388.

Bradley v. Bander, 36 U. S., 28.

Newark Bank v. Assessor, 30 N. J. L., 13.

Inhabitants, etc., v. Berkshire Co., 16 Pickering, 572.

Whiteside v. Northampton Co., 42 Pa. St., 936.

Seward v. Rising Sun, 79 Ind., 351.

3. Where an agent within the State representing a non-resident principal is clothed with power and authority to create credits or to loan money for his principal within the State, and in the exercise of a discretion and choice which his principal has reposed in him for this purpose does so, such credits and choses in action having been by him negotiated, made, and the consideration passed within the State, the agent holding an actual and effective control over the business, retaining in his own possession within the State the evidences of such debts or procuring their return to him when due for collection and return or reinvestment, the course of business being general and amounting more or less to a permanent business, then, and only then, may the State by legislation separate the *situs* of such property for taxation from the domicile of the owner, and give it a *situs* within the State for purposes of taxation.

This extended statement of the rule in such cases is deduced from all the decisions, and meets the requirements of every case where such a tax

has been sustained. The rule, however, has been much more succinctly, and perhaps more intelligently, stated by the Court in *Pullman's Palace Car Company against Pennsylvania*, 141 U. S., 18, where MR. JUSTICE GRAY said that the rule that the *situs* of personal property is at the domicile of the owner yields to the "law of the place where the property is kept and used."

This separation, however, of credits and choses in action from the domicile of the owner so as to become amenable to the revenue laws of another State must be actual and effective, and involve the full control of the credits and securities there. It is not enough for such purpose that the non-resident owner has an office or representative within the State engaged in and about other branches of its business; the representative must also be engaged in loaning money or creating credits and choses in action within the State, having in such transactions that full measure of authority and control that the owner himself might exercise if personally present. The credits and choses in action must be created and made under the laws of the State. They must be kept there, or, if temporarily absent, must be returned there to be paid and re-invested. The State must be the place of their origin, their custody, and their control; it must be their true home in order to separate their *situs* for purposes of taxation from the domicile of the owner.

Buck v. Beach, 206 U. S., 392.

Metropolitan L. I. Co. v. New Orleans, 205 U. S., 395.

Board of Assessors v. Comptoir Nat., 191 U. S., 388.

Bristol v. Washington Co., 177 U. S., 133.

New Orleans v. Stremple, 175 U. S., 309.

Walker v. Jack, 31 C. C. A., 462.

Liverpool, &c., Ins. Co. v. Bd. of Assessors, 51 La., An., 1028.

Bailey v. Bd. of Assessors, 44 La. An. 766.

Matzenbaugh v. The People, 62 N. E., 546 (Ill).

Matter of Estate of Jefferson, 35 Minn., 215.

State of Miss. v. Smith, 68 Miss., 79.

Goldgart v. The People, 106 Ill., 25.

Billingshurst v. Spink Co., 5 S. D. 84.

Finch v. York Co., 19 Neb., 50.

Catlin v. Hull, 31 Vt., 152.

Herron v. Keeran, 59 Ind., 472.

In *Buck v. Beach*, 206 U. S., 392, the State of Indiana undertook to tax promissory notes of a resident of New York, which represented money loaned by the agent of the payee thereof, at Cincinnati, Ohio. The laws of Indiana provided for taxing "bonds, notes, choses in action and other evidences of credits."

Buck v. Miller, 147 Ind., 586.

Buck v. Beach, 164 Ind., 37.

The notes in question were within the State of Indiana in the hands of an agent and representative of the owner there, who was engaged for the owner in loaning money for him in that jurisdiction, but the notes in question did not arise out

of the business done by this agent; they were sent to him by the Cincinnati agent of the owner at the time property in Ohio was being listed for taxation, and for the purpose of avoiding taxation in Ohio.

The Court held that, notwithstanding the notes were present in the hands of the owner's agent, the State of Indiana had no jurisdiction to tax them, and that "the assessment in this case was made upon property which was never within the jurisdiction of the State of Indiana, the State had no power to tax it, and the enforcement of such a tax would be the taking of property without due process of law."

Metropolitan Life Insurance Co. v. New Orleans, 205 U. S., 395, was referred to by the Court in deciding *Buck v. Beach*. In the *Metropolitan Life* case the Court sustained the Louisiana tax on loans which the Insurance Company made within the State, but in that case "the insurance company chose to enter into the business of loaning money within the State of Louisiana, and employed a local agent to conduct that business; it was conducted under the laws of the State." When a loan was accepted "the company forwarded to the agent a check for the amount, with a note to be signed by the borrower. The agent procured the note to be signed, attached the policy to it, and forwarded both note and policy to the Home Office in New York. He then delivered to the borrower the amount of the loan. * * * * The notes and securities were in Louisiana whenever the business exigencies required them to be there. Their removal with intent that they be returned whenever needed, their long continued, though not permanent, absence, cannot have the

effect of releasing them as the representatives of investments in business in the State, from its taxing power. *The law may well regard the place of their origin to which they intend to return as their true home, and leave out of account temporary absences however long continued.*"

In the Metropolitan Life case, therefore, the transaction was a Louisiana transaction. "The loans were negotiated, the notes signed, security taken, interest collected and debts paid within the State." But in the case at bar these things are not so. The loans were not negotiated in Louisiana: they were applied for at the Home Office of the Company and accepted or declined there. The securities were not taken within the State: they were taken at the Home Office of the Company where the amount of the loan was paid by forwarding the check to the borrower, drawn on the Company's bank account in New York City. These claims are not paid when due in Louisiana: they are both payable and paid in New York where payment is not accepted until received at the Home Office; and in case of default or enforced collection, they are foreclosed at the Home Office by charging the amount due against the value of the policy in the manner provided in the contracts. Their origin is at the Home Office of the Company where they always remain and where they are invariably paid or foreclosed. The domicile of the owner is their true home, from which the State of Louisiana has no power or jurisdiction to separate them, for they never were kept or used within that State.

Bristol v. Washington County, 177 U. S., 133 was referred to by the court in *Metropolitan Life v. New Orleans* as indistinguishable from the

Metropolitan Life case. In the Bristol case, a resident of New York had been engaged for fourteen years in lending money in Minnesota through agents there who, with full authority, "*made all such loans and took and retained all notes and securities and collected and re-loaned both the principal and interest of said loans at said City of Stillwater, in Washington County, Minnesota, and kept the same permanently invested in that way as nearly as practicable save as to such moneys as said Jefferson drew from time to time to pay debts and living expenses.*" The city taxed these choses in action, and in order to avoid future taxes the notes were delivered to the owner, the agents retaining the mortgages, "and thereafter all new notes taken in the business were sent to her and kept by her in her home in New York, but these notes were payable as before at the office of the agents in Minnesota; the mortgages securing notes were retained by the agents and the notes were returned to the agents from time to time whenever required by them for the purpose of renewal, collection, or foreclosure of securities. The agents continued to collect the money due on the notes, and to make loans in the name of Mrs. Bristol, sometimes under her husband's direction, but generally on their own judgment; and they remitted money to Mrs. Bristol whenever she called for the same, while what was not received by her was invested in new loans."

Under this state of facts, these loans were held to have acquired a *situs* in Minnesota for purposes of taxation separate from the domicile of the owner because the creditor had given it "a business *situs* elsewhere." In the opinion in the case, the court quoted with approval from a Min

nesota decision on the same subject, as follows,—
 “Now here was property within this State not for a mere temporary purpose, but as permanently as though the owner resided here; it was employed here as a business by one who exercised over it the same control and management as over his own property, except that he did it in the name of an absent principal. It was exclusively under the protection of the laws of this State. It had to rely on those laws for the force and validity of the contracts on the loans and the preservation and enforcement of the securities.”

Thus in the *Bristol* case, the property in question had a *situs* for taxation away from the domicile of the owner because the owner had separated it from her domicile and from her property in general, and had put it in charge of representatives within the State with full power, authority and discretion to make loans, to fix the terms thereof, to receive and accept the securities, to collect the debts when due by suit or otherwise, to re-invest the money, and in short to exercise as full authority and control as the owner himself might do if personally present. The securities were exclusively under the protection of the laws of Minnesota, upon which the owner relied for their validity and enforcement.

If, therefore, the *Bristol* case is not distinguishable from the *Metropolitan Life* case it is widely distinguishable from the case at bar. Here the owner did not separate the property in question from its domicile or from its other property in general; it did not put it in charge of a representative within the State of Louisiana with power or authority or discretion to make loans, or fix the terms thereof, or to receive or accept securities,

or to collect the debts when due by suit or otherwise, or re-invest the money. No person within the State of Louisiana ever had any power or authority whatever to exercise any control over it. The Company controlled the property at its Home Office and never relinquished any part of this control. The securities never have been under the protection of the laws of Louisiana, nor does the Company rely upon the laws of that State for their validity or their enforcement.

Board of Assessors v. Comptoir National, 191 U. S., 388, is also cited by the Court in the Metropolitan Life case. In that case, a corporation organized under the laws of the Republic of France was assessed for moneys loaned on interest and so forth, and the validity of the assessment was in issue. The corporation had an agent in New Orleans engaged in lending money for it there "without consulting the office in Paris". The loans were made by the agent accepting satisfactory collateral from the borrower, in consideration for which the corporation gave the borrower credit in a New Orleans bank for the amount of the loan upon which the borrower drew checks on the bank.

"The exact question is, Whether these checks, secured by collateral held by the agent, are evidence of credits for money loaned upon interest, having a local *situs* in New Orleans, and constitutionally taxable within the meaning of the Louisiana statutes?

"In this case we are not dealing with that branch of the business of the Comptoir which relates to bills of exchange sold to its customers, but the assessment is sought to be made upon those credits which arise when money is loaned and advanced or paid in the

State to the customer upon collateral security, and the latter's check is taken therefor. The transaction from which the alleged credits arise is briefly this: The customer applies for a loan of money, and offers as security a bill of lading or other collateral, and the money is paid to him. Instead of a note the Comptoir takes the check of the customer, which is regarded as an overdraft, upon which the customer can make payment from time to time and upon which he is charged interest, and, upon the non-payment of the check, the collateral is subject to sale.

"Is this a credit for money lent on interest, taxable under the laws of Louisiana as interpreted by the Supreme Court of that State?

"The real transaction between the parties was intended to create and did create a debt held for the Comptoir by its agent in the State of Louisiana, and evidenced by the check, and secured by the collateral, which debt, when paid, created a fund in the hands of the agent subject to loan and re-investment by him without consultation with the principal, in such sense as to localize the credit for the purpose of taxation as effectually as it would if a non-negotiable note had been taken."

This *Comptoir National* case, again, like the *Bristol* case and the *Metropolitan Life* case, was a transaction where the owner of the security was represented within the State by an agent who had within the State the money of his non-resident principal, with full power and authority in his discretion to loan, collect and re-loan the money there, to pass upon, accept, and retain the securities within the State, the principal having, for all practical purposes, segregated that part of its property from its domicile, located it with-

in the State of Louisiana, and given its control and management over to a representative there with full power to invest and re-invest it in his discretion. To the laws of Louisiana the owner looked for the protection of his property and relied on them for the enforcement of his securities. The case is in no respect parallel to the case at bar.

New Orleans v. Stemple, 175 U. S., 309 is also referred to in the Metropolitan Life case. In that case, the non-resident creditor inherited property in Louisiana "evidenced by notes largely secured by mortgages on real estate in New Orleans; that these notes and mortgages were in the city of New Orleans in possession of an agent of the plaintiff who collected the interest and principal as it became due and deposited the same in a bank in New Orleans to the credit of the plaintiff" for re-investment there. Under the circumstances, the court sustained the tax. MR. JUSTICE BREWER, after reviewing the decisions of the State court on the subject, said,—

"From this review of the decisions of the Supreme Court of the State it is obvious that moneys, such as these referred to, collected as interest and principal of notes, mortgages, and other securities kept within the State and deposited in one of the banks of the State for use or re-investment, are taxable under the act of 1890. They are property arising from business done in the State; they were tangible property when received by the agent of the plaintiffs, and, as such, subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited the moneys became the property of the bank, and for most purposes the relation of debtor and

creditor arose between the bank and the depositor, yet as *evidently the moneys were to be kept within the State for re-investment or other use they remained still subject to taxation.*"

Here again, the property taxed was in the hands of the agent with full power of control, with authority to invest, manage, collect and re-invest in his discretion and relying on the laws of the State for its protection and the enforcement of the securities. By these facts the *situs* of the property for taxation became separated from the domicile of the owner and assumed the domicile of the agent because it was kept and used there.

But no court has ever held that credits and choses in action not so segregated, with respect to which no representative of the owner within the State has ever had any authority, control or jurisdiction, that were not negotiated or made there, that were never within the jurisdiction of the State in any way, nor protected by its laws nor dependent upon them for their enforcement, acquired a *situs* within the State for purposes of taxation or for any other purpose.

The Louisiana decisions are in harmony with the Federal decisions on this subject. Like the Federal courts, the Louisiana Courts hold that the *situs* of credits and choses in action for purposes of taxation is at the domicile of the owner; that they do not acquire any other domicile unless they are separated from the other property of the owner by being under the management and control of an agent within the State with full power and authority in his discretion to invest, collect and re-invest the same, and are

dependent upon the laws of the State for their validity and enforcement.

In *Bailey v. Board of Assessors*, 44 La. Ann. 766, the court said,—

“Even debts may assume such concrete form in the evidences thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities and, possibly, of negotiable promissory notes, bills of exchange or bonds.

“But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any *situs* distinct from the domicile of the creditor, and no legislative power exists to change that *situs* so far as non-resident creditors are concerned. * * *

“*A state has no more power to subject such debts due to foreign creditors to taxation than it would have to tax their corporeal movables situated at their foreign domicile.*”

A proper inquiry in every case for determining whether or not credits and choses in action have acquired a *situs* for taxation away from the domicile of their owner is,—Have they acquired a business *situs* there? Are they there in the hands of another clothed with authority and discretion to exercise the control over them that the owner himself might exercise if personally present, and do they rely for their validity and enforcement upon the laws of the State? If so, then they have acquired an actual *situs* there, are present within the State, and so the State may tax them. Some of the most illuminating decisions on this subject make use of this expression, business *situs*, describing its characteristics substantially as here stated.

In the *Bristol* case, 177 U. S., 133, the court said,—“The creditor, however, may give it a business *situs* elsewhere, as where he places it in the hands of an agent for collection and renewal with a view to reloaning the money and keeping it invested as a permanent business.”

In *Matter of Estate of Jefferson*, 35 Minn., 215, which the Court quoted from at length in *Bristol v. Washington County*, 177 U. S., 133, the Court said,—“Now here was property within this State not for a merely temporary purpose, but as permanently as though the owner resided here. It was employed here as a business by one who exercised over it the same control and management as over his own property, except that he had it in the name of a business principal.”

In *Herron v. Keeran*, 59 Ind., 472, the court after citing and commenting on numerous cases on this subject said,—“Those cases all held that such property cannot be so taxed unless it has acquired what may be denominated a business *situs* in a State other than that of the residence of the owner.”

On the other hand, if such property has not acquired a business *situs* in the State in the sense in which the words are here used, if the credits and choses in action are not created, kept, managed and controlled by an agent within the State who stands in respect of them in the place of his principal, exercising effective control over them and full discretion in their management, the securities relying upon the laws of the State for their protection and enforcement, then they are not taxable there.

Securities may be "sent into the State for collection, inspection, safe-keeping or the like," and yet not be subject to taxation therein.

Buck v. Miller, 147 Ind., 586.

If they have been reduced to concrete form, such as promissory notes, or are merely in *the hands* of an agent for the purpose of collecting the principal and interest and remitting the same to his employer, or if the agent does not occupy the position of a trustee clothed with discretion and choice as to instruments to be made but acts merely under the special direction of a non-resident owner of the property, the State does not acquire jurisdiction for purposes of taxation.

Buck v. Beach, 206 U. S., 392.

Meyer v. Seeburger, 45 O. S., 332.

Boardman v. Supervisors, 85 N. Y., 358.

Herron v. Keeran, 59 Ind., 472.

Whether, however, we call the conditions that may separate credits and choses in action from the domicile of their owner for purposes of taxation "a business *situs*", or "the place where the property is kept and used", or use still more general terms, the important thing is that this separation cannot be made unless the owner himself makes it by putting the property in the hands of an agent or representative within the taxing district, clothed with authority in his discretion to invest, manage and re-invest the same, giving him an actual and effective control over the business as well as possession within the taxing district of the evidences of the indebtedness or their return to him when needed, in such manner and form as

to constitute an established business conducted by the agent for his principal and dependent upon local laws for its success. If credits and choses in action are the outgrowth of a business so managed and controlled within a State, then they have a business *situs* there; they are kept and used there; they have in fact a *situs* there separate from the domicile of the owner, and may be taxed there. But if these things are not so, then the rule that their *situs* for taxation and for other purposes is the domicile of the owner is not merely a fiction, it is also a fact,—because they do not belong, they are not located, they have and can have no *situs*, elsewhere.

4. Not a single element usually incident to taxation or the levy and collection of taxes obtains here, to say nothing of the essential requisites of a valid tax.

These policy loan contracts and premium lien notes have no practical value within the State of Louisiana; their value is at the domicile of the Company in the policy reserves which the Company in making such contracts relies upon for their fulfillment.

If the property were within the State and taxable there, necessarily there would be some person within the State who could make a true return thereof to the assessor. But no person within the State knows, or has the means of knowing, the number or amount of these policy loans or premium lien notes, nor can these facts be ascertained within the State. If the property were there, these facts also would be there.

A valid tax is usually a lien on the property on which it is levied. Where is the property that this tax is a lien upon? "*The whole theory of*

taxation under the Constitution of 1879, which governs in this case, was based on the idea that the taxes were a property tax and that the property assessed should be seized and sold to satisfy the taxes for which it was assessed. The old method of recovering taxes by a suit against the debtor was abolished."

Liverpool, &c., Co. v. Bd. Assessors,
51 La., 1028.

If collection by seizure and sale is the whole theory of taxation within the State, then suppose the defendants were to undertake to seize and sell the property assessed here for this tax, what property would they seize and sell, where is it, and what title would the the purchaser get?

By arbitrarily putting figures on an assessment roll, the appellants were not powerful enough to bring within the State any of these contracts for any purpose. They are still in fact beyond the reach of any levying process the State can devise. No officer however armed by statute or court process of the State can seize upon them, or any part of them, to make these taxes out of them. The securities are held by their owner outside of the State of Louisiana, and within the jurisdiction of the State of New York and within reach of its officers and process, and so far as Louisiana is concerned are wholly subject to such taxes as the State of New York may see fit to impose.

Taxation is justified upon the ground that the property owner receives an equivalent in the protection of his property and in the remedies afforded by the laws of the State for their collection when due.

"The power of taxation, indispensable to the existence of every civilized government, is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property, or in the creation and maintenance of public convenience in which he shares, such, for instance, as roads, bridges, sidewalks, pavements, and schools for the education of his children."—MR. JUSTICE BROWN in

Union Refrigerator Co. v. Kentucky, 199 U. S., 194.

A reason given for sustaining the tax in *Blackstone v. Miller*, 188 U. S., 189, was the advantages the law of the place affords for collecting the debt. MR. JUSTICE HOLMES said in that case,—

"What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place."

The State courts are in harmony with the Federal courts in basing the taxing power upon the assumption of an equivalent rendered to the taxpayer in the protection of his property and in the remedy afforded for its collection when due.

In Minnesota, in the *Matter of Estate of Jefferson*, 35 Minn., 215, which this Court quoted from as authority for the decision in *Bris*

tol v. Washington Co., 177 U. S., 133, the tax on notes and mortgages owned by a non-resident, but negotiated, made, managed, collected and re-invested within the State by an agent residing there, was sustained for these reasons together with the fact that the property "was exclusively under the protection of the laws of this State. It had to rely on those laws for the force and validity of the contracts on the loans and the preservation and enforcement of the securities."

In North Carolina, a tax on land contracts made, negotiated and kept within the State was sustained, for "their validity and protection, and the remedies for their enforcement all depend upon the laws of this State and in neither respect (or in any other that we can now think of) do they take any benefit from the laws of the plaintiff's domicile. It is but just, therefore, that they should contribute towards the support of the only government which affords them protection, and help to defray the expenses incurred in so doing. The actual *situs* and control of the property within this State, and the fact that it enjoys the protection of the laws here, are conditions which subject it to taxation here."

Redmond v. Comm'rs, 87 N. C., 122.

"Taxation and protection are correlative terms. Protection to that portion of property not taken or absorbed by the tax is the consideration or compensation for all legitimate taxation. Without this protection or some benefit to be returned therefor, taxation would be but another form for spoliation or confiscation."

Fisher v. Comm'rs of Rush Co., 19 Kan., 414.

Not only do the courts, Federal and State, regard taxation and protection as correlative terms, but they treat the converse of this as true, and characterize taxation without protection or without some benefit in return therefor, as spoliation or confiscation.

In *Union Refrigerator Company v. Kentucky*, 199 U. S., 221, the court, after stating that taxation is exercised upon the assumption of an equivalent rendered to the taxpayer, went on to say,—
"If the taxing power be in no position to render these services, or otherwise to benefit the person or property taxed, and such property be wholly within the taxing power of another State to which it may be said to owe an allegiance, and to which it looks for protection, the taxation of such property partakes rather of the nature of an extortion than a tax."

Apply this test to the situation here. What protection, what benefit of any kind, do these policy loans or premium lien notes derive, or can they derive, from the State of Louisiana, or from its laws or courts? They are never within the State to be protected there. The Company does not ask nor receive the authority, sanction, or protection of the State or of its laws in respect to them. Not being made, kept, or collected within the State, they cannot be protected by the State.

The State is in no position to give any protection to them, or to afford any benefit to the Company in respect to them. The State cannot, by anything it may do, add to or detract from the value of the securities, or the means of enforcing them. All these contracts and the means for their enforce-

ment are wholly within the jurisdiction and under the authority of another State to which the complainant looks for their protection, and upon which it relies for their validity and enforcement. Taxing them, therefore, within the State of Louisiana "partakes rather of the nature of extortion than a tax." It is "but another form for spoliation or confiscation."

5. The average balance in the Number One Bank Account was not taxable. The deposits in that account were purely for the purpose of transmitting funds to the Company's Home Office and for no other purpose. The total amount to the Company's credit in the account was drawn out weekly by draft drawn at the Home Office by the Treasurer of the Company and another, and this was the sole purpose and use of the account.

We do not claim that the Number Two Bank Account was not assessable for taxation. We concede that it was. For that account was under the control of a resident agent who had authority to draw upon it. It existed for the purpose of having funds within the State with which to transact the Company's business there. The moneys in that account were used for the purpose of transacting business within the State. Hence they were taxable there.

Bluefields Banana Co. v. Board of Assessors, 49 La. Ann., 43.

But not so as to the Number One Account. The Number One Bank Account was not under the control of a resident agent within the State. No one within the State had power or authority to draw funds from it or to check upon it. No part

of the account was used in the Company's business within the State, but just as soon as a deposit was made it became subject to the control of the Home Office only and could be withdrawn only upon the draft of two officers at the Home Office. This draft for the entire balance of the account the Home Office drew weekly.

These two accounts made a complete, precise and perfect division of the Company's funds to the extent of segregating the capital required or subject to use for the purposes of the Company's business within the State from its funds not connected with its business in the State. The Number Two Account represents the capital employed in carrying on the Company's business within the State and was used for this purpose. The Number One Account was a transmission account which every person within the State lost control of as soon as a deposit was made to the credit thereof.

On this feature of the case the Learned Trial Court said,—

“It certainly could not be contended, that if these collections were at once invested in New York Exchange, without being put in bank at all, they would become subject to taxation.

“That money deposited in bank in one State solely for transmission through such bank to another State is not taxable in the State in which the bank is located was expressly decided in *Metropolitan Life Insurance Co. v. Newark*, 62 N. J. L. 74, and that decision seems to me to state the law correctly. The cases in Louisiana which have held that deposits in bank to the credit of a non-resident are taxable in this State proceeded on the admitted fact that the deposits were controlled by some agent of the depositor in Louisiana,

and were used for the purposes of the depositor's business in Louisiana.

Clason v. La., 46A1.

Bluefields Banana Co. v. Assessors,
49A. 43.

Parker v. Strauss, 49A. 1173."

In *Metropolita Life Insurance Company v. Newark*, 62 N. J. L. 74, cited by the Court in the opinion in this case, the City of Newark levied a tax on the funds of the Metropolitan Life Insurance Company of New York in Bank of Newark, consisting of premiums collected there and deposited for transmission to New York. The facts in the case "show that there is collected weekly at the Newark office in premiums on outstanding policies of life insurance from the holders thereof in this State about \$7,000, and that this money is paid into or collected at this office during the week; that it is deposited by Williams as received in bank, and at the end of the week the whole sum of money so collected, received, and deposited is transmitted by him, by check to the home office of the prosecutor in the city of New York.

"It is clear from the authorities that, were this the money of an individual citizen and resident of the State of New York, it would not be the subject of taxation in this State. Neither a debt due to a citizen of New York nor a balance in bank of this character would be taxable. These collections are made from day to day during the week. They are added together, and deposited either at the end of the week or from day to day, and at the end of the week transmitted by check to the home office. They are only temporarily in the place of deposit, not kept there for use in any business affairs of the insurance company in this

State, nor as capital for use or investment here, but simply and wholly for convenience to facilitate and expedite its transmission to the home office in the city of New York. If these amounts were kept in the pocket of the superintendent, and carried to New York at the end of each week, it would hardly be suggested that they, either separately or in gross, would be the subject of taxation. If they were received in checks by the superintendent in his name, and indorsed by him to the prosecutor, or if the amounts as received were made up into packages, and carried at once to the home office, or expressed to it, with what show of reason, under the statutes which impose taxation under personal property of a corporation, could the assessment be upheld? It is absolutely nothing more than a convenient method of transmission which is sought to be laid under the tribute of taxation. This money is merely in transit from the policy holders to the insurers, and for the purpose of transit collected into convenient amounts in the hands of one person. The nature and character of the business done characterizes the money sought to be taxed, and would quite clearly, in reason, indicate that it cannot be considered as ratable."

This New Jersey case, which is the nearest in point of any decision we have found, harmonizes with the principles employed in the decisions of the Courts of Louisiana as well as of this Court in this class of cases.

Baily v. Board of Assessors, 44 La. Ann., 766.

Clason v. New Orleans, 46 La. Ann., 1.

Liverpool, etc. Co. v. Board of Assessors, 51 La. Ann., 1028.

Thompson v. Riggs, 5 Wall., 663
National Bank v. Millard, 10 Wall.,
 152.
Leather Bank v. Merchants Bank,
 128 U. S., 26.

In *Clason v. City of New Orleans*, 46 La. Ann., 1, the sole question was as to whether or not "moneys standing to the credit of a non-resident firm on the books of a New Orleans bank" are taxable, the deposits so made not being in the control of a resident agent for use and used in business within the State. The Court held that such deposits could not be taxed. In their opinion the Court said,—

"We cannot distinguish between the debt due to the plaintiffs by a bank as arising from a deposit to the credit of the firm in money, and that due to it from any other cause.

"The relations between the plaintiff and the defendant are those of creditor and debtor. The moneys were not specially deposited and to be identically restored. They went into the mass of the bank's money with the understanding that they might be used and should be the basis of items in a debit and credit. *Sims v. Bean*, 10 An., 347; *Mathews, Finley & Co. v. Their Creditors*, 10 An., 344."

The Supreme Court of Louisiana declared in *Baily v. Board of Assessors*, 44 La. Ann., 766, that a deposit in bank to the credit of a non-resident of the State was a mere indebtedness having its *situs* at the domicile of the creditor, "*and no legislative power exists to change that situs so far as non-resident creditors are concerned.* * * * *A State has no more power to subject such debts*

due to foreign creditors to taxation than it would have to tax their corporeal movables situated in their foreign domicile."

It does not change the character of this indebtedness that the money deposited in the bank was money paid by policy holders within the State. It is not for this reason taken out of the State, nor made taxable to the complainant. By depositing the money in the bank it thereby became the property of the bank to be invested by it and used as it pleased. As between the bank and the complainant the deposit created the relation of debtor and creditor, the debt from the bank to the Company being payable on presentation of a draft drawn from the Home Office and not otherwise. The money deposited remained in New Orleans in the bank in which it was deposited. Therefore if taxable because it was money, it was taxable to the bank as its owner, and not to the Company which by depositing it relinquished all title to it.

In *Bluefields Banana Co. v. Board of Assessors*, 49 La. Ann., 43, an assessment for money of a non-resident deposited in a New Orleans bank was sustained; but in that case "the foreign corporation had an agent here where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agent for purposes incidental to the prosecution of its business, and part deposited to the credit of the company *subject to the check of its local agent, also for the prosecution of its business here and for such other purposes as the company might direct it to be applied.*"

The principle upon which *Bluefields Banana Company v. Board of Assessors* was decided sus-

tains the tax against the complainant on the Number Two Account, but it is not applicable to the Number One Account, for that account is subject only to the order of the officers at the Home Office; it is at most but a simple indebtedness from the bank to the Company, such as the court in the *Clason* case and in the *Baily* case held that the State had no jurisdiction to tax. It has no value within the limits of the State. "Its value is at the domicile of the creditor, where it has its *situs*." It is not property save at the domicile of the creditor. If assessed and sold for taxes no legal title would pass. Such is the law in respect thereto as stated and applied by the Louisiana courts themselves in the cases above cited.

Fourth. The blue notes are not subject to taxation because they are neither credits nor any other form of property capable of valuation or subject to taxation. As an inspection of the form of the notes clearly discloses, they are merely an extension of the time for paying the premium. If they are taxable, then also are unpaid premiums on all the Company's policies within the State taxable, a proposition which I dare say no one will contend for.

Fifth.—This tax deprives the Company of its property without due process of law and denies to it the equal protection of the law.

Buck v. Beach, 206 U. S., 392.

Delaware, etc., Co., v. Pennsylvania Co., 198 U. S., 341.

Louisville, etc., Co. v. Kentucky, 188 U. S., 385.

State Tax on Foreign-held Bonds, 15 Wall., 300.

This is not a tax upon any contracts made and kept within the State: it is a tax upon contracts made in another State and always kept there. It is not a tax upon business done within the State: it is a tax upon business done in another State. It is not a tax upon credits and choses in action that have or can by legislation or any act of the appellants be made to have a *situs* within the State: it is a tax upon contracts that have their *situs* at the domicile of their owner where they were negotiated, made and kept.

It is not a tax for which the company receives or can receive an equivalent in the protection of its property or any benefit in respect thereto. If the company had no agent or representative within the State, it would make these contracts and handle the transactions in all respects as to its Louisiana policyholders just as it now does in respect of its Texas policy-holders, where it has no office or representative within the State for any purpose. All protection which the Company receives in respect of this property is at its Home Office, where this business is done, and where the securities are kept. It is not a tax upon property which depends, or may depend, for its validity or for its value on the laws of Louisiana and in respect of which those laws have or can have any effect whatever; it is exclusively under the protection of the laws of New York on which the contracts rely for their validity and enforcement. The State of Louisiana does not and cannot render any of these services. It is in no position to do so, or otherwise to benefit the complainant in respect thereto. The property is "wholly within the taxing power of another State, to which it may be said to owe allegiance, and to which it looks for protection." It is beyond

the reach of any levying process Louisiana can devise. No officer, however armed by statute or court process of the State of Louisiana, can seize upon it for taxation or other claims. The contracts and the securities are held by their owner within the jurisdiction of New York, within reach of its officers and processes, and so far as Louisiana is concerned are solely subject to such taxes as New York may see fit to impose. Therefore the State of Louisiana and its municipal subdivisions are as powerless to tax them as would the Courts of the State be powerless to render a personal judgment against a resident of New York not personally served with process within the State.

The language of Mr. JUSTICE FIELD, in *State Tax on Foreign-held Bonds*, 15 Wall., 300, appropriately describes and characterizes this attempt at taxation,—

“It is only one of many cases where, under the name of taxation, an oppressive exaction is made without constitutional warrant, amounting to little less than an arbitrary seizure of private property. It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its full value.”

V.

The policy loans and the premium lien notes are not loans nor credits in the true and ordinary sense, nor are they a personal liability of the policyholder; they are an anticipated settlement with the policyholder based upon the accumulated value of the policy, and in no sense are they taxable property.

This true nature of these transactions is the basis upon which the Learned Trial Court, without considering the other questions here discussed, entered a decree for the Company in this case.

The Court's opinion is founded at Pages 115 to 131 inclusive of the record. After fully discussing the facts in the case, which the opinion shows the Court thoroughly understood and had carefully considered, the Court concluded on Page 126 as to policy loan contracts as follows,—

“To me it is very clear that this entire transaction called the Policy Loan is not, in any respect, a loan but is an anticipated settlement made with the consent of the company, and based upon the earned value of the policy at the date of the so-called Policy Loan. In other words it is a mere incident and modification of the original contract of insurance on the life of the policyholder.

“The insurance company acquires no credit under this arrangement other than the maker of a promissory note would acquire if he made a partial payment upon that note before its maturity.

“I therefore hold that the Policy Loan arrangements do not establish any credits in favor of the insurance company in which the insurance company can be taxed, either by the laws of Louisiana, or by the laws of any other State.”

And as to the premium lien notes, after a like consideration, the Court said, at Page 128,—

“These Premium Lien Note Loans, are, in all substantial respects, the same as the Policy Loans, merely evidencing a condition of the arrangement for giving the policyholder the immediate use of the earned value of the policy under the obligation to allow it as a credit to the company in the eventual settlement of the policy.”

The blue notes, the Court held (p. 129), “are clearly not credits, but mere agreements to extend the time for paying the premiums.”

The views of the Trial Court accurately bring out the true and essential nature of these transactions, and conform both to the principles upon which the business of life insurance is conducted and to the policy contracts pursuant to which the so called loan contract were made.

In the business of life insurance on the level premium plan, the policyholder pays annually in the early years of the policy, when mortality is low, a premium in excess of the sum required to pay the current cost of insurance in order that the excess so paid when invested may accumulate and justify the Company in accepting in the later years of the policy when mortality is high a premium less than the then current cost of carrying the insurance. This over-payment in the early years of the policy is called the reserve and, to

gether with its interest increase, is the basis of the Company's reliance to meet all its insurance undertakings as they mature.

If a policyholder wishes to take this accumulated reserve on his policy and in consideration of the Company advancing it to him is willing to pay the Company for it a sum equivalent to a fair rate of interest, his receipt and use of it upon these terms is just as consistent with the principles of life insurance as if the Company put it to any other use with any other person in return for an annual interest payment.

But the policyholder to whom the Company advances the reserve on his policy must thereafter in dealing with the Company about his policy be charged with the sum so advanced to him. If the policy is permitted to lapse and no part of the reserve on it has been advanced to the policyholder, then both the policy contract and the laws provide that the Company shall give him non-forfeiture insurance for the value of the reserve on his policy; but if the Company has advanced to him the reserve or any part of it, then he, having received such value of his policy, cannot again have the benefit thereof, but his non-forfeiture benefits are thereby cancelled if he has received the entire reserve or cancelled *pro rata* if he has only received a part of the reserve.

The policy loan contracts and the premium lien notes are mere evidence of this advance to the policyholder of the reserve *pro tanto*. If the policy becomes a claim by death or as a matured endowment, or any benefit becomes payable thereunder, the sum already advanced to the policyholder is deducted from the sum so payable (p. 89). This both the loan and the lien note contracts expressly

provide for. If default is made in paying the premium or interest, both the loan and the lien note contracts provide that the sum already advanced to the policyholders shall be deducted from the sum which by the terms of the policy would otherwise be applicable to the purchase of insurance in the event of the non-payment of premium or interest when due.

The Trial Court therefore, was entirely accurate in holding that these transactions constituted "an anticipated settlement" with the policyholder based upon the earned value of the policy at the date of the transaction. "In other words it is a mere incident and modification of the original contract of insurance on the life of the policyholder" (p. 126).

Whatever view we take of the case, therefore, this tax is void. If, on the one hand, we consider these contracts without any reference to the character of the business to which they relate, they are contracts which never had, and which the State was powerless to give, a *situs* within the State for any purpose. Therefore, to impose a tax upon them within the State constitutes a taking of the Company's property without due process of law and a denial to it of the equal protection of the law. If, on the other hand, we consider them with reference to their true intent and purpose, and in connection with the essential nature of the business to which they relate, then it is perfectly clear they are not credits at all but are mere anticipated settlements with the policyholder based upon the accumulated value of his policy, which are finally adjusted as a mere matter of book-keeping at the Home office of the Company in New York, and never elsewhere.

Therefore the decree of the Trial Court is clearly right and should be affirmed.

Respectfully Submitted,

CHARLES S. RICE and
RICHARD B. MONTGOMERY,
Solicitors for Appellee.

JAMES H. McINTOSH,
Of Counsel.

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